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Dowry in tradition and text:

Śāstra, statute and the ‘living law’ of dowry as *sadācāra* in India

By

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PhD submission

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September 23rd 2012

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Abstract

Despite modernisation and legal intervention, the practice of dowry in India today continues, although prohibited by state law. Traditional academic discourse tended to link dowry practices to Sanskritisation, denying the validity of dowry as a normative marital custom, strengthening calls for a legal ban. While India's Dowry Prohibition Act (1961) appears to outlaw dowry, in reality it continues to respect the practice as custom and even makes room for it. Initially the statute allowed Rs 2000 as a token dowry, post the 1980s amendments this amount was raised to Rs 5000, in keeping with the rate of inflation at the time. Overlooking this aspect of the statute, current academic discourses fail to adequately address what causes the persistence of dowry. This thesis considers how and why dowry has long defied legal prohibition and continues today as a major determinant in 'ideal' marriage alliances. Thereby this thesis aims to fill a gap in the current understanding of dowry as a normative marital custom.

In this thesis I interpret the giving and taking of dowry as *sadācāra* (good collective custom), in spite of legal, and public agitation and moral bans. Methodologically based on legal and textual anthropology, this inquiry explores the triangular interaction of traditional cultural texts, modern statutory law as another form of text, and social customs old and new. In such complex ancient textual roots lie the murky but discernible workings of dowry as *sadācāra*, or *dharma* with a very small 'd'. Relying specifically on an academic appraisal of the role that anthropology and history continue to play in the construction of South Asian worldviews, the thesis demonstrates that within textual tradition lie the notions of an uncomfortable and intensely plural legal modernity, which continues to use medieval and more ancient customs while striving for a progressive future. This thesis argues that the ancient *Brahma* form of Hindu marriage remains the idealised *kanyadān* model for modern Hindu marriages. I argue that *kanyadān* veritably imbues dowry within it. This analysis confirms that text has always had a limited influence over the development and maintenance of socio-legal norms in Indian society. Traditional cultural texts tend to assert certain ideals rather than reflect social reality. However, the modern social practise of dowry as 'good custom' even the right thing to do in the form of 'living law' harmonises the various contradictions in the light of marital expectations, old and new. The three theories of Sanskritisation, Orientalism and Feminism overlay the central argument of the thesis, which is that the custom of dowry is and has been and continues to be a socially sanctioned necessary part of Hindu marriage. Let us set a working hypothesis, then. Dowry as a cog of culture works. It has a proven life of its own; it has successfully operated for a minimum of three thousand years, give or take a century. It refuses to go away. This confirms that the statutory abolition of dowry in Indian law is merely a textual fiction that serves a variety of agenda. Then perhaps, it is fair to stake an assumption that dowry is necessary to Hindu or Indian marriage in some way. This thesis therefore suggests that dowry law reform must consider alternative methods to protect women.

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Abbreviations:

AiĀr	Aitareya Āranyaka
AIR	All India Reporter
ĀpDS	Āpastambha Dharmaśāstra
ĀpGS	Āpastambha G hyasūtra
ĀśGS	Āśvalayana G hyasūtra
AV	Atharvaveda
BDS	Baudhayana-Dharmasūtra
DPA	Dowry Prohibition Act (1961) including all the 1980s amendments
DPR	Dowry Prohibition (Maintenance of List of Presents to Bride & Bridegroom) Rules, 1985, including all its amendments
DVA	Protection of Women from Domestic Violence Act (2005)
DVR	Protection of Women from Domestic Violence Rules (2006)
GDS	Gautama Dharmaśāstra
HDŚ	History of the Dharmaśāstra
HMA	Hindu Marriage Act (1955)
IPC	Indian Penal Code (1861)
JB	Jaminīya-Brahmana
JGS	amini-G hyasūtra
KāthGS	Kāthaka G hyasūtra
MBh	Mahābhārata
MDŚ	Mānava Dharma-Śāstra
MS	Manu Sm ti
R	Rāmāya a
V	g Veda
SC	Supreme Court of India
VaikhGS	Vaikhānasasmārtasūtram
VaikhŚS	Vaikhānasa-Śrautasūtram
YājñSm	Yājñavalkya Sm ti
VJI	Vanger Jātiya Itihāsa
VS	Vi nu Sm ti
SMA	Special Marriage Act (1954)

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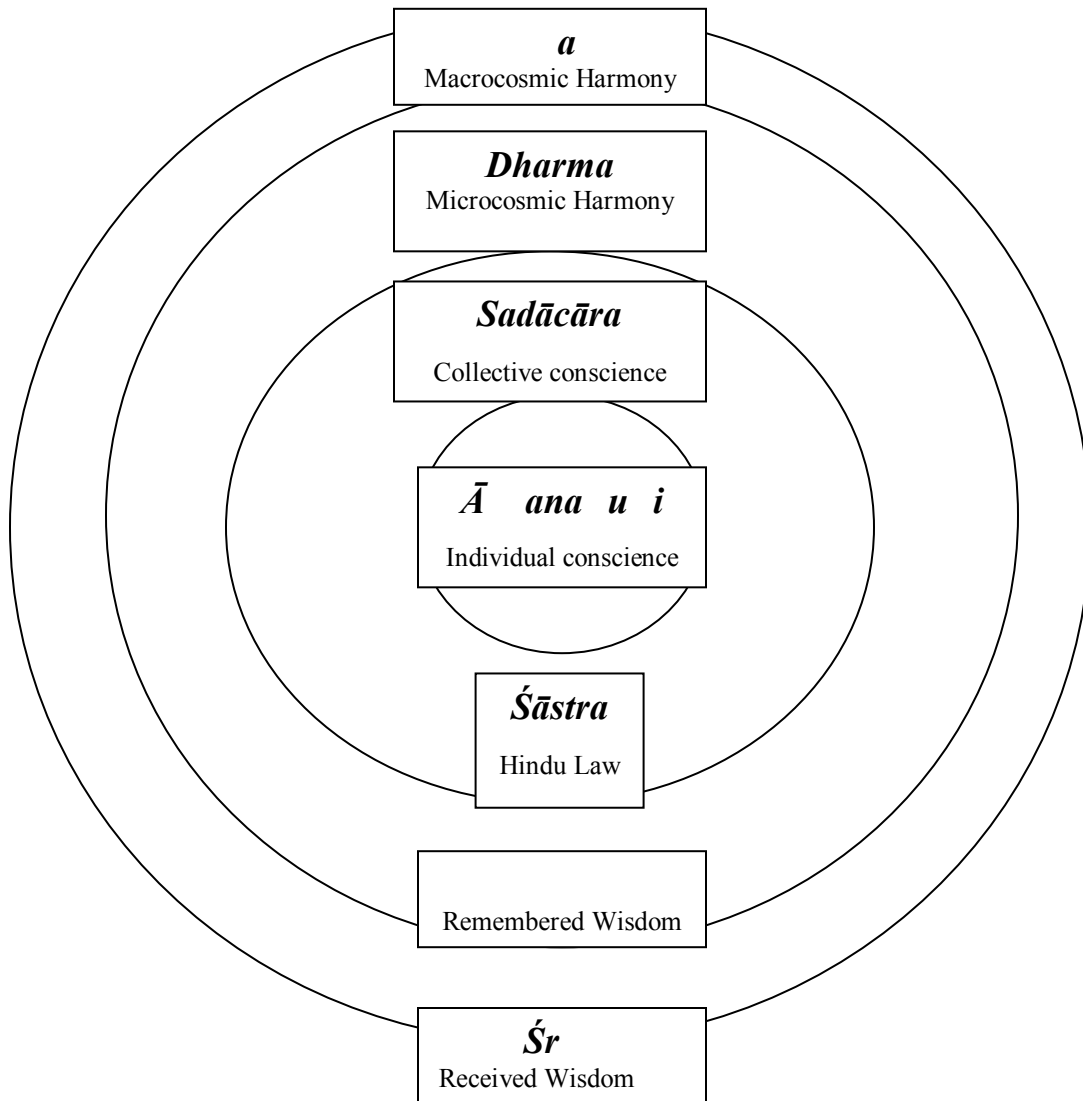
Warli etching: Circle of Solidarity in ancient pictorial terms



Seen here in an ancient wall painting, represents the cosmic harvest dance of a universe in harmony. Every cog in place, each member playing their part, therefore the circle of solidarity as I see it is harmonising society through connectivity with nature. This is clearly visible as a means to balance and stabilise human relations to each other. This ancient cave-painting style etching, practised today as a modern art form, by the Maharashtrian Warli community harks back to a period before recorded literature to demonstrate social belief in linking with nature and each other to reinforce harmony.

Whorls of harmony:

Circle of Solidarity in terms of *a* and *Dharma*



Chapter 1

Introduction

India in 2012 is sustaining economic growth in spite of a global financial crisis (Ninan, 2010). For the past five decades India has seen consistent consumerist growth, mirrored also in dowry-related practices (Saavala, 2010), and the death by homicide or suicides of some 25,000 women in India each year is still linked by the media to dowry.¹ Defining dowry in general terms remains problematic. The Oxford English Dictionary defines dowry in general terms as “property or money brought by a bride to her husband on their marriage”. As a marriage-related practice, dowry in different forms exists almost universally and is not unique to the specific cultures of Indian communities. To set the current social context; questions have been raised over decades about why dowry as practised in the South Asian, even Indian, context apparently leads to conflict, and to the deaths of many young women. The establishment has stopped seeking answers. This thesis asks, why?

In discussing the role of dowry in tradition and text this thesis takes up three issues. One, the dowry expectations found in the cultural texts, collectively called *śāstra* in this study. Two, it questions the position of the Indian *Dowry Prohibition Act* of 1961 (DPA),² a legal statute regarding the practise of dowry giving and taking in Indian social reality. And finally, it considers the curious nature of dowry behaviour as it appears in usage across Indian communities, both at home and abroad, presenting itself almost as a ‘living law’ (Ehrlich, 1936). One of the core concepts this thesis deals with is that of *sadācāra*, which has variously been translated. It is a compound term comprising the two Sanskrit words *sad* or good and *ācāra* behaviour. But here this core concept, present in classical Hindu law (Menski, 2003: 31), is considered the collective conscience represented by the good behaviour of good people.³ This brief explanation should clarify the notations of the various ancient and classical Hindu law terms in the title of this work. ‘The Circle of Solidarity’ as presented in photo plate 1 and the diagrammatic

¹ See “1 dowry death every 4 hrs in India”, an article on the Zee News channel’s dedicated website, updated on Monday, December 2007, <http://www.zeenews.com/news414869.html>. See also Dowry Today: An overview, a documentary on perceptions of dowry in India today (2003).

² Throughout this thesis, the abbreviation DPA includes the original statute of 1961 and its subsequent amendments made in the 1980s.

³ Menski (2003: 31) for instance translates it as ‘model behaviour’ because of the implication within this judicial and moral orbit of the term as an official source of Hindu dharma.

representation of the whorls of harmony as widely perceived by Indian communities is necessary to ground this thesis in its cultural context. Everything is linked: typically *ṛita* is considered the widest whorl, or encircling boundary that guides all right behaviour. In a Hindu law sense, this would be further guided by the cosmological guidance of *ṛita* macrocosmic harmony (Miller, 1985), while the inner whorl of *dharma*⁴ relates to microcosmic harmony. Additionally, both are linked by belief to a set of texts, originally oral. In the case of *ṛita* this co-relates to *ṛgveda* or the received wisdom contained in the Vedic *mandala* or collections, while *dharma* is seen to relate to what is considered *śāstra* or the remembered wisdom of a people, as contained in a copious collection of *dharma* texts, also collectively called *śāstra*. These are fluid terms, and do not always have defined rigid boundaries as one might expect of usual sociological categories.⁵ *ṛita* is linguistically very close to the Hindi word *ṛiti* in common usage today, which represents a harmonic repetition with particular reference to ritual.⁶ The thesis employs these terms here as such, in a manner similar to their social usage. However the presence of a glossary will guide the reader by assigning broad meanings for the purpose of clarity. Both the Warli (an ancient tribal art form of Maharashtra) photo plate and the diagram construct a view of Hindu social life as being cyclical, constantly linked, constantly renewing, and somehow constantly aware that history is an ongoing ritual of peeling and unpeeling whorls of culture.

Do dowry expectations appear to be (Chapter 5) woven into the very fabric of the most highly emulated of all ancient marriage forms *Brahma* as described by the cultural texts? Further, how does this apparently idealised and pure marriage form relate to what has been encoded as the official modern Hindu marriage enshrined by the positivist state law into the HMA (1955). This after all is the expected type or form of marriage that will be followed by all those marrying officially under Hindu rites. A burgeoning middle class in India today have had a specific impact on this as well. The only academic study on dowry linking traditional and modern India was released eight years ago (Oldenburg, 2002). This claimed that dowry did not originate in ancient Indian customary practice. I,

⁴ *Dharma* is a concept, indeed a category, that cannot be satisfactorily translated, see Doniger and Derrett's (1978: xiv-xv) incisive discussion on its relationship with the concept of duty in ancient and contemporary India. See also Kunst (1978: 3-18).

⁵ The terms tradition and custom are used inter-changeably in this study, reflecting similar usage at ground level. It seems meaningless to assign fixed sociological definitions to these terms, since sociological terminology finds no representation in the minds of those who dynamically act out these terms in life.

⁶ For example in India the modern Hindi term *rit-riwaj*, incorporating *ṛiti* (tradition) and *riwaj* (custom), is used widely to refer to both concepts.

and others, find otherwise. This thesis suggests, that dowry is very much part of the cultural textual tradition of India (and indeed South Asia), and has been so from its earliest inception. Further, the research evidence produced here confirms that while the modern legal tradition appears to outlaw dowry as a custom, in reality it makes room for it. Initially a token sum of Rs 2000 was considered acceptable by law, this was amended to Rs 5000 in the 1980s, accounting for the rate of inflation at the time. It appears therefore that the prohibitive dowry statute of 1961, with its various amendments during the 1980s is some kind of symbolic, even myopic legislation, and therefore this thesis argues that the whole strategy of tackling the 'dowry problem' must be urgently re-assessed. The intervention of normative positioning creates a conflict where none existed before. The DPA does not in fact decree that no dowry whatsoever should be given or taken, but it seeks to curtail exploitative practices.

My thesis is concerned with the inscription in society and law of a particularistic notion and set of practices comprising of dowry, deemed 'right' or desirable 'good custom', as probably contained within the idealised form of the ancient *Brahma* marriage type. This social approval seeking is what according to ancient Hindu legal terminology has been called *sadācāra* or simply, 'good custom' which may be explained further as a good social norm. As clarified this thesis casts the concept further to include the wider collective community conscience. However, in modern India, dowry is considered negative, and yet it appears integral to the Indian wedding ceremony.⁷ The main aim of my thesis is to examine, analyse and explain this somewhat contradictory articulation.

1.1 Thesis focus: The persistence of dowry as a problem

Why does dowry persist in Indian communities if it is so problematic a custom? After all there is the *Dowry Prohibition Act* of 1961 in Indian law. Does the presence of this prohibitive statute, instituted almost fifty years ago, not curtail the performance of dowry as a customary practice? Latest recorded reports highlight that there are 19 dowry-related deaths a day, or one death every 75 minutes, according to the National Crimes Bureau All

⁷ *India Today* of 31st January 2004, in a Special Issue on Youth Power, reported that a representative survey across India found that 25% of respondents thought it was ok to receive dowry, but 79% did not believe in extravagant weddings. Though dowry as a custom is practised variously by different communities, the defining principle appears to be similar in most cases. Some communities for social or political reasons shun dowry, like the Gandhians who consider dowry the consumerist aspect of marriage. It is therefore not a uniformly followed practice.

India statistics.⁸ Governmental intervention, by instituting a statute in law, clearly has not worked in this field. This thesis questions why, in spite of a prohibitive statute law (DPA), dowry exists as a strong marriage practise across Indian communities, at home and abroad?

The primary focus in this thesis is to build the foundation for my argument that text is a form of tradition⁹ itself. As noted in the very title, in terms of Hindu legal terminology: *śāstra* is *sadācāra*, *śāstra* as represented by authoritative cultural text, and *sadācāra* as represented by custom or tradition as the case might be in the form of a collective community conscience. One flows from the other, but may not seem to do so. Although I argue that texts are compilations of idealised traditions, in the case of dowry we have the initial difficulty that this is a custom never clearly mentioned by name in the traditional cultural texts. It appears therefore to have no clear ontological origin. However, there are copious expectations noted in various layers within the literature, which lend themselves to examination. This thesis questions whether dowry is somehow entrenched within the notion of a ‘model marriage’, as represented by the most ancient verses. And that this ‘model’ is upheld as the most exemplary of sacred unions, in the *śāstra* sense; always to be replicated by the human unions being sought in the *dharma* sense. The marriage hymns of *gveda* X.85 and *Atharvaveda* Book 14 may hold clues to this.

Of particular concern to the present study therefore is the notion of dowry rooted in the traditional *śāstra* patriarchy that has taken precedence across India as a tradition that is adhered to, believed in, and has been carried forth through generations, reinforcing patriarchal norms despite legal bans. As a matter of fact the very emulation of the *Brahma* marriage form associated very closely to various dowry marriages today as the norm attests this historical process. Is there, therefore, a conceivable link between the three: (i) the ancient model of marriage found in the old verses of *gveda* X.85 and *Atharvaveda* Book 14, (ii) binding it by practise to the model marriage in medieval times as perpetuated by the *Brahma* form attested in the *Mahābhārata* and (iii) finally linked by definition and auspiciousness to the model contained in the legally defined Hindu marriage as contained in the Hindu Marriages Act (1955)? What evidence exists to clarify these connections?

⁸ The National Crimes Bureau refreshes its website with monthly updates of these figures, for detailed statistics see www.ncrb.org. Also, see Table 3: All India Dowry Death Index (1991-2000).

⁹ See chapter 2 for a discussion of the correlation between tradition and *religio*.

Although, this is not yet another legal dissertation, focusing on the tired old topic of “dowry in India”, it sets out an examination of law in terms of law making, seeing this as a social process in the anthropological field of human society. Further, this thesis focuses on the question of whether law is governed by social behaviour, or by textual tradition. Therefore, the topic of dowry, in text and tradition, is examined in terms of social reality governed by notions of ‘living law’. The manner in which this thesis examines law as a social process is by clearly casting dowry behaviour as a legally controllable phenomenon in the past and present. Rather, it examines text and custom in order to distinguish the old established practice of dowry as separate from dowry-related deaths and murder, both in the past and in the present. In seeking evidence to understand how dowry functions this thesis scrutinises expectations from two specific layers of texts: broadly the modern legal texts and the traditional cultural texts. A specific delineation of the various types of text this thesis tackles is dealt with in section 1.3 below.

Dowry represents a traditional marriage custom and is therefore uncomfortable to admit in an up surging global modernity. In the past decade there has been little movement on any front dealing with dowry. On the academic front, the last dedicated publication appeared a decade ago (Oldenburg, 2002). On the social reform agenda, tackling dowry-related issues meaningfully seems to have been shuffled down to the last row, as though it were no longer important. Recent efforts at reform, by government-led agencies, have removed dowry from the immediate public agenda, filing these away as a mere aspect of domestic violence and the wider issue of gendered violence. It would appear that dowry *per se* has lost its priority with policy makers. In spite of the high officially recorded rates of death linked to the practice of dowry, the social reform agenda is seeking to protect women in other ways. It also seems as though dowry as an issue has been forgotten for almost a decade. Social work groups, initially funded by the government have been disbanded as pointless. Therefore, the urgency for this study arises from a desire to set in motion a fresh approach to understand the wider framework of dowry practice, to better inform meaningful policy making for women.

The practice of dowry persists. Dowry as a customary marriage practice thus needs re-examination through tradition and in the form of text. Due to the persistence of dowry practice in real life this thesis examines specifically the historical articulation and interaction between traditional cultural texts and modern statutory law indicating the relevance and importance of dowry to Indian marriages. As all things Indian, there are as

many types of Indian marriage as there are communities in India. Indian marriages are in no way bound in a code of cultural behaviour that is uniform, in spite of the presence of the HMA. The emphasis is always on plurality. We must recognise that local variations of every specific community set the standard of marriage for that specific community. However, while taking note of these local variations this study seeks to understand the conceptualisation and practice of dowry in traditional and modern Indian marital expectations and arrangements, in an attempt to understand the persistence of this custom. The primary analytical aim is to examine, analyse and explain the co-relation between social practice and the ancient and modern textual tradition in determining a seeming agreement that dowry must be practised as a form of ‘living law’,¹⁰ equated here for Hindu purposes as *sadācāra*.¹¹ Briefly, the notion of social approval seeking is what according to ancient classical Hindu legal terminology is called *sadācāra* in the past. This thesis stretches this definition to include collective community conscience, even the right thing to do. The ‘good’ of this conscience is taken as being inherent in its essential form. How can one therefore, outlaw what is conceived to be ‘the right thing to do’?

Traditional academic writing has linked dowry to the process of Sanskritisation;¹² which is the gradual acquisition of higher caste symbols by members of lower castes and classes seeking upward social mobility (Srinivas, 1984: 7-14). In the past dowry as a ‘custom’¹³ has been cast in various roles: as a construct created by the over-zealous taxation system of the East India Company (Oldenburg, 2002) in order to encourage “conspicuous consumption” (Thakur, 1998: xvi), or as an invention of the patriarchal system to rob daughters of their inheritance (Kishwar, 1999: 20-23). This also ties in with the hypergamous ethos of Indian marriage culture, (see section 4.3 below). The dominant trend in Indian academic research and among nationalist writers has been, as Jamison (1996: 3-4) rightly asserts to glorify the past position of Indian women.¹⁴ This thesis

¹⁰ For a further explanation of the term ‘living law’ see Ehrlich (1936) and also in more detail below. The contributions of several forerunners of this concept have highlighted the “cultural nature of law”: Wundt, Savigny, Hegel, Maine, Post, and Kohler (Chiba, 1986: 4).

¹¹ See section 2.5 below for an in-depth discussion.

¹² For a specific examination of Sanskritisation to religiosity in the modern middle classes in India see Saavala (2010: 156-169). In a connected discussion also see a much earlier work Velten (1911)

¹³ When highlighted by single quotation marks the term ‘custom’ denotes the implications of the popular understanding of custom as traditional family and community practices sanctioned by society at large and not the academic sociological phenomenon of a precise vehicle of culture.

¹⁴ However, during the late nineteenth and early twentieth century women writers developed a critique of the traditional, *rahana* cultural practices. These writers sought to clarify that the “golden age” might not have been so golden after all. See in particular Pandita Ramabai’s *The High Caste Hindu woman*

takes the view that traditional texts assert certain ideals rather than reflecting social reality. Dowry appears to be underwritten as integral to marriage transactions and is perceived as good customary practice. It is not prescribed, but it is suggested that – sensibly used – it is actually part of *dharma*. This thesis therefore examines the futility of banning dowry in the light of marital expectations old and new. Despite modernisation and legal intervention, the practice of dowry in India continues today outside the scope of formal law. This demonstrates that modern statutes, as text, have limited influence on social practises. Further, that deeper cultural concepts, which are found in the older texts, other than legal statutes, and of course within socio-cultural processes themselves, remain an important influence of current socio-cultural practices.

Accordingly, my research tracks a two-pronged path: First, after discussions of textual anthropology in chapter 2 and legal anthropology in chapter 3, it outlines a conceptual model for traditional dowry expectations as an accepted custom in terms of economic interaction between families in society (chapter 4). Second, it highlights the fact that dowry as a custom might not be as problematic as it has been made out to be by rather myopic attempts at lawmaking. I therefore emphasise that modernist law making on dowry has introduced a conflict of expectations which cannot be resolved as originally planned by those who wish to use law as a method of social engineering. In fact the formal modern law demands one ideal and society continues to conform to another. In a post-modern world we therefore have come to the realisation that there is a new conflict between text and custom. This thesis deals mainly with two types of texts: firstly, the traditional cultural texts comprising the early Hindu ritual texts and secondly the modern texts, comprising the modern law books and statutes. In my opinion, as indicated, the whole DPA of 1961 is some kind of symbolic legislation even myopic, which gives this statute as text a rather different status than lawyers and a wider public have been led to believe (section 2.2). The emphasis to continue things as they have been practised for generations gives a sense of harmony and propriety to society. Dowry, this suggests, has the force and influence of such a harmonising custom.

My assertion is that dowry and dowry-related practices, both during and after the marriage, are governed by these fluid rules operating within the jurisdiction of custom. This gives them the force of tradition and links them with unwritten sanctions, should

(1888), Tarabai Shinde's *Sri Purusa Tulana* (1882). For further detail see O'Hanlon (1994) on Tarabai Shinde; Chakravarti (1998); and Ramabai (1984) [1888].

there be any abrogation.¹⁵ Therefore we cannot start at the point of the inefficacy of the law; rather we need to question and examine the efficacy of custom or *sadācāra*. Dowry, I argue, is clearly representative of *sadācāra* as defined above, and since this concept is interlinked with custom we must examine how ‘custom’ itself functions in the Indian context and is made to work, though of course there will be abuses, as in any social context. I argue therefore that from the earliest verses what has been preserved is a complex combination of custom and idealisation, which seeks to influence ‘right’ behaviour and to thereby become a norm, although it is imperative to consider that these norms still remain fluid, flexible and also subject to selfish exploitation

Methodologically the concept of ‘legal pluralism’ is important to this thesis as a conceptual back-bone. Briefly, this approach highlights law as just one feature in a social field, stressing also that law may take many forms (Moore, 1978). This is the starting point, then, for a social understanding of the literature of ancient India and its anthropological relevance to legal analysis today, and it highlights the particular methodological approach employed in this study. Geertz (1973) espoused the idea that culture is a semiotic concept and equated ethnography with interpretation, or the reading of text. He explained that the purpose of cultural analysis should be a quest for interpretation and meanings, not a search for the truth, in his words: cultural analysis should “not be an experimental science in search of law but an interpretative one in search of meaning” (Geertz, 1973: 5). Importantly, it is unsatisfactory to study law in isolation from its social context. The thesis therefore combines these two aspects, guided by comparative law scholarship that is influenced by recognition of the cultural dimensions of law (Chiba, 1986: 1; Menski, 2000: 69). Dowry expectations here are examined as a part of marriage arrangements. The ancient Hindu texts are re-read in order for an adequate picture to be unearthed and drawn of the economic expectations at play before and during marriage negotiations.

Tradition, as highlighted in the title of this thesis, has again received renewed attention recently. In legal theory, it seems tradition manifests itself with fresh emphasis on the critical role of social forces acting within legal analysis (Menski, 2000). This also

¹⁵ It is uncomfortable for grooms who refuse dowry. The girl’s family may believe their capability is being doubted, this ties in with Raheja (1996) and Marriot’s (1955) findings that there exists a hierarchical asymmetry between wife-givers and wife-takers. This has been borne out by discussions with friends in India, particularly in the case of ayesh, who admitted being deeply troubled with his bride’s family insisting on expensive functions and several gifts, even after the wedding.

appears to be brought on by a set of internal circumstances, which were examined using an international social science survey of western society in the early 1990s (Inglehart, 1995: 47).¹⁶ Most notably, this survey highlighted a “post-modern shift” over the last twenty-five years or so of the twentieth century, characterised by a gradual move away from “rational-legal authority” toward “self-expression”. In order to meaningfully situate the argument in the wider context of the universality of law making and legal sources it becomes imperative to note H. Patrick Glenn’s (2004) perspectives in this area. Glenn (2004: xxiv) holds that both political and social theory have begun to recognise, once more, the validity of ‘tradition’ as a possible means of “maintaining social coherence”. This concept underlies the discussion here, whether tackling modern or ancient law making agenda, and will be taken up further at some length (see, chapter 3).

1.1.2 Thesis scope: The misguided dowry debate

Why does dowry persist? In order to establish the wider scope of this thesis it is crucial to discover how dowry has long defied legal prohibition and why it continues as a major determinant in marriage alliances today, good and bad, notwithstanding the legal ban. Further, it becomes pertinent to examine what constitutes the so-called ‘dowry debate’.¹⁷ This raises questions about the nature of contemporary dowry discourses and why they seem to have failed in the real search for solutions. Journalists and activists have pursued the issue of the gruesome suicides and homicide related to dowry demands, while lawyers and academics examine another aspect of solving the ‘dowry problem’ (Menski, 1998). Many activists are abandoning their previous commitment to the anti-dowry campaign because answers have been so hard to come by (Kishwar, 1988: 10-13; Agnes, 2001). While modern attitudes and texts in the form of the DPA of 1961 sum up dowry as negative, traditional Hindu texts set in the context of a patriarchal society seem to endorse dowry. The dowry statute law was deliberated over for a decade (see chapters 2

¹⁶ This is a report on a 43 nation World Values Survey, carried out in 1990-1.

¹⁷ The phrase ‘dowry debate’ must be distinguished from ‘dowry problem’. In this thesis the former refers to the media’s construct of dowry as a social evil, carrying implicit dimensions, while the latter refers to the academic construct on research issues surrounding dowry. See Menski (1998), discussing South Asian dowry problems faced by South Asian communities in Britain, India and South Africa.

and 6) before the passing of the DPA, categorically criminalising the practice of dowry, but to little effect.¹⁸

My research directly addresses long-standing assertions that, dowry giving did not originate in Indian traditional custom (Srinivas, 1984; Witzel, 1995; Thakur, 1998). Additionally more recent academic assertions (Oldenburg, 2002) confirmed this claim. Such efforts to dissociate dowry from Indian history continue. Such a stance is deeply problematic, seeking once more the mistaken golden age ideologue now associated with the politically motivated Hindu Right. This study clearly finds that dowry as a ‘custom’ was neither the construct of an over-zealous East India Company to encourage “conspicuous consumption” (Thakur, 1998: xvi), nor the construct of a patriarchal system to rob daughters of their inheritance (Kishwar, 1999: 20-23). Rather, my research finds there are indeed underwritten expectations that influence normative behaviour to uphold the practice of dowry as part of an appropriate, even ideal marriage, as the findings here affirm. The normative behaviour I speak of here takes the form of the customary collective social conscience or *sadācāra*. How this is achieved will be here examined.

More specifically, as briefly seen above, this thesis argues that the ancient *Brahma* form of Hindu marriage, typified by the *kanyadān* (gift of the girl),¹⁹ which remains the idealised model for modern Hindu marriages in India, despite various reforms, which have also sought to outlaw the phenomenon of dowry. My thesis is concerned with the inscription in Indian society and law of the particularistic notion and set of practices comprising of dowry behaviour, deemed ‘right’ or desirable ‘good custom’ or *sadācāra* contained within this idealised form of *Brahma* marriage. In these complex ancient textual roots lie the murky but discernible workings of dowry as an intricate and fail-safe system using the notion of *sadācāra*, or model behaviour of the peer group, to perpetuate itself.

This thesis begins the discussion (chapter 2) by focussing on the conflict between the subaltern views of India and the need to recognise itself as a powerful democratic nation state, with an elevated position on the world stage after years of struggle against a colonial reality. Just laws, civil society and a formal legal system are of course the

¹⁸ Numerous dowry convictions continue to be made under section 498 A of the *Indian Penal Code* (IPC) of 1860, often referred to as the dowry section of the IPC, since it deals with cruelty in marriage and is applied to apprehend perpetrators of dowry-related violence (Palkar, 2003: 181-4).

¹⁹ Whether appearing as one word or two the concept of *kanyadan* remains the same: *kanya*-unmarried girl and *dān*-gift.

fundamental provision of such an entity. Dowry, seen as restrictive to modernity is also seen as representative of the old traditional marriage and the mention of it must be dispensed with at least by paying lip-service to it being rooted out. The modern establishment will time and again quote the existence of the statute as proof that dowry is indeed gone. Therefore in the contemporary context, particularly in India, it seems that people are aware of the legal ban on dowry (Jaising, 2000). It is hard to ignore the spiralling statistics of dowry-related deaths, so dowry is publicly condemned as a social evil. An estimated 25000 women are killed or severely maimed every year (Thakur, 1998; Menski, 2003: 307).²⁰ There is little doubt that the increased incidence of dowry deaths in India and in ex-patriate Indian communities is a problem of considerable magnitude. However, to put the number of deaths in perspective: many millions of marriages are contracted in India every year with some form of dowry changing hands. Not all end in the killing or suicide of the bride as a direct result of dowry. Dowry itself cannot be the sole reason for the dowry problem. Indeed, more recent research, as yet to be published (Wyatt, 2010) suggests that the so-called ‘dowry problem’ has much more to do with relationship problems and conflicts than with the financial arrangements in marriages. If that is so, then, what is ‘the dowry problem’?

In a post post-modern world, it seems that we therefore have a new conflict between text and custom, because law today claims to defy or at least attempts to defy patriarchal principles and upholds individual rights instead.²¹ There is renewed focus on the importance and validity of ‘tradition’ as a “fruitful field” and thus a valuable source for legal concepts, both in the west (Glenn, 2004) and the east, (Chiba, 1986; Menski, 2002). Therefore, bearing this renewed broad research agenda in mind the focus here is to build the foundation for my argument that text is tradition itself. In Hindu legal terminology, this would mean *śāstra* is *sadācāra*. Tradition, I argue, in turn is text itself, maybe an oral text or a non-textual text, but a form of script nevertheless. One flows from the other, but may not seem to. To be clear: I argue in the main that texts are compilations of idealised traditions. When dealing with dowry we have the initial difficulty that this is

²⁰ In the last couple of decades deaths of young brides have been variously named: ‘bride-burning’ and ‘dowry death’ are two terms coined to categorise this phenomenon linked to marriage customs. More recently ‘dowry murder’ has been added to the terminology. For a detailed study of the cultural ramifications of this crime see Oldenburg (2002: 3-18).

²¹ This raises the question whether the custom of dowry is blameworthy in essence. The intent is not to seek “golden beginnings” but to examine the nature of custom as separate from the practice, to sift the ideal from the actual. (See Nietzsche: Rabinow, 1984).

a custom never clearly mentioned by name in the traditional cultural texts. I search therefore for expectations within the literature and for the possibility of locating traditional terms that give away the socio-cultural reality of dowry at much earlier stages than most of the literature suggests.

This study examines dowry as a complex conglomerate of culture and attempts to disentangle the array of issues around it by focusing on the following aims:

- 1] To formulate a meaningful conceptual model to analyse the meaning and perpetuation of dowry;
- 2] To emphasise the dynamic relationship of custom with differing types of textual ideals;
- 3] To argue that dowry has always existed as part of the Indian Hindu tradition as a major determinant in suitable marriage selections as the *Brahma* marriage form;
- 4] To assess the role of the dowry statute as a well-intentioned, but misguided legal strategy, ultimately defeated by social norms.

Through this historically based analysis, the impossibility for a third world postcolonial nation to disentangle itself completely from constructions of the older European imperial ideologies and its own longitudinal discourse is demonstrated. Such nations, with an uncomfortable colonial past and their legal systems need to find their own culture-specific path and place in the world. There is pressure always to conform, to do the right thing, to have an egalitarian society, based on certain images, old and new, of a 'golden age'. Governments today function to enforce the law through legal regulation and a judiciary to therefore conform to the models set out by agencies that recognise difference as divisive. The media continues to highlight the tussle of the state with society.

Unsurprisingly, thus, dowry problems and dowry-related death and murder have received intensive media attention. It is clearly condemned by Indian society at large and the image of dowry is used as a measure of India's lack of development and, more recently, failure to comply with international legal standards. And yet something exerts an influence on parents when negotiating marriages, so that despite moral and legal discomfort a dowry is often transacted.²² There is little consensus on whether or not dowry as a custom is the main problem. As noted, recent reforms by government-led

²² Menski (2003: 33) discusses the large scale "legal disobedience" being formatted, to some extent, as part of the formal legal framework. The recent fieldwork-based study of Saavala (2010) has many references to expectations that dowries will be given and taken.

agencies removed dowry from the immediate public agenda. Notably, Sakhya, a Bombay-based vigilance cell set up in collaboration with the State Department of Welfare for Women and the Maharashtra State Police, was disbanded after fifteen years of conducting anti-dowry research and campaigning.²³ The Maharashtra State Government was in search of a solution to the dowry problem; since none was found, the project was abandoned. The government prefers to plough resources into more tangibly solvable problems like the rehabilitation for women rag-pickers and child prostitution. Not that these are not areas that require urgent attention, but is it responsible to abandon one project for another? Further, can one completely abandon the search for solutions to the dowry problem after years of tangible research? A visit to the Greater Bombay Police Statistics Department in May 2003 showed a recorded rise of 5% from 2002 in dowry-related death figures for the state of Maharashtra.²⁴ This cannot be solely due to a higher rate of incident reporting, as has been suggested in the past. Some socially motivated factor surely continues to function despite the intervention of the judiciary and activist groups.²⁵ What is this forceful factor? This is what must be researched here.

Despite modernisation and legal intervention therefore, the practice of dowry in India continues today outside the scope of formal law. This shows that when dealing with dowry as an abhorrent custom, the modern statutes are bound to have limited influence. The fact that modern lawmaking is unable to influence custom challenges the legalistic assumption that social practices can today (or could ever) directly and effectively be influenced by text in the form of statutes. This becomes a “limits of law” issue, then (Allott, 1980). Taking the example of dowry, the present thesis examines and compares how the early Hindu texts and modern Indian statutory law influence social behaviour and socially embedded practices like dowry.

²³ Dr Kalindi Muzumdar, Former Dean of the Nirmala Niketan College of Social Work and Former Director of Sakhya in an interview, in April 2002, Bombay, documented as part of the present thesis in a documentary series entitled ‘Dowry Today: An Overview’.

²⁴ Unpublished data, from the Greater Bombay Police Statistics Department, given in a personal interview with Manjeet Singh, Deputy Director of the Statistics Department, Mumbai Police, May 2003. See also Table 3.

²⁵ See also accusations against then Women and Child Development Minister Renuka Chowdhury for doctoring actual dowry death statistics by Save Indian Family Foundation spokesperson Swarup Sarkar, who objected to the “false” cases being included in the overall statistics. Also see “More than 6,000 dowry-related cases registered yearly: Govt” March 10, 2008 (http://timesofindia.indiatimes.com/More_than_6000_dowry-related_cases_registered_yearly_Govt/article_show).

Why, despite knowing the law, do people act in contravention of it? This observation demands that the perception of custom and law be examined in order to raise the question whether the DPA has been a misguided strategy. This study suggests that we may be looking through the wrong end of the lens in searching for a solution to the dowry problem. Important to note here is that this inquiry does not claim to offer an effective solution to the current dowry problem, though it sets itself the task of exploring expectations, possible solutions and reassessing the current legal position.

The research in this thesis is conducted using the methodology of textual and legal anthropology. Two processes influencing the conceptualisation and practice of dowry today are analysed here. First, there is the interaction of tradition, traditional text and custom in shaping the perception of dowry and its practice. The ideal of *dharma* in the text and the reality of custom or *riti* on the ground and their interaction are therefore crucial to consider. Second, the interaction between law and society in India today is analysed as another extremely complex tension between textual ideal and social reality. This tenuous relationship that appears to maintain order and harmony through written rules is examined in terms of the ideal and the actual; here the ban on dowry co-existing with the persistent practice of dowry itself. As we will see in more detail further on, the existing text of the relevant statute, the DPA, has actually anticipated that dowry would continue to be given. Different from the earlier manifestation of ideals in the older textual material, what becomes a new focus of research is how today we have a new conflict created by the social engineering agenda of the law. The context demonstrates that in order to meaningfully understand dowry in the ancient and modern context it is necessary to chart a course of study which accounts for this hydra-headed research issue.

My research must therefore take an approach which accounts for the several aspects of the 'dowry problem'. The two-pronged path specified above is worth reiterating and explaining in a little more detail.

First, it is essential to outline a concrete conceptual model for traditional dowry expectations as an accepted custom in terms of economic interaction between families in society (chapter 4). Therefore one must consider how in the traditional context this may have meant that the expectations reflected in text and in social reality did not necessarily conflict. In a modern context, this of course has changed, this must be accounted for. Both the traditional texts and traditional society, as the research here will demonstrate (chapter 2 and 3) were based on the same patriarchal concepts, according to which

women moved from their natal family to the husband's home and brought some form of property with them. In an early agrarian context, this implied that the bride normally moved without any immovable property rights to her natal home, since the family she married into must now take on the responsibility for her upkeep. It seems so simple and commonsensical. In an ancient society dominated by concepts of patriarchal joint family property, individual rights may not feature at all, it was the harmony of the wider group, in this case the joint family, which is all important. There is therefore little conflict. What this simplified picture does not account for is the presence of matrilineal communities within Indian culture as well as the fact that in real life, death and disaster may wipe out many family members and then leave women in positions of responsibility and of property ownership that the classical ideals may not have accounted for. Surely, female-headed households are not a consequence of modern industrial society, they are an ancient phenomenon. Simplistic perceptions of male and female patterns of property ownership are, thus, going to be a potential stumbling block for understanding the complex pluralities within 'traditional' Indian societies.

Second, highlighting the fact that dowry as a custom might not be as problematic as it has been made out to be by confused attempts at lawmaking, I emphasise that modernist law making on dowry has introduced a conflict of expectations which cannot be resolved as originally planned. In fact law demands one ideal and society continues to conform to another.

1.2 Context: Problematising dowry in text and tradition

The context of this thesis is primarily a textual context, which links ancient and modern concepts and practices. One of the four primary aims of the thesis, as stated above, is to trace the conceptual development of dowry as a custom from its earliest to its current forms.

This thesis asserts the view that traditional texts assert certain ideals rather than simply reflecting a type of social reality. Dowry appears to be underwritten as integral to marriage transactions and is perceived as good customary practice, as expressed in the expectation of *sadācāra*. Given the superior status accorded to 'custom' by the early traditional texts (Derrett, 1968; 1970; Lingat, 1973; Lariviere, 1984), this means probably that little conflict existed between text and practice, because both were aware of the need

to adjust individual action to situation-specific solutions in terms of marriage making and giving dowries (Menski, 2003).

In modern society, the legal text of the DPA exists in conflict with practice or the custom of dowry. To clarify the problem, these two layers of texts are examined here: the traditional and the modern, creating a combination of legal and textual anthropology. Further, the present analysis offers an exploration of the relationship between custom and modern statutory law (as another form of text), both influencing the conceptualisation and persistent practice of dowry in India today. It examines the ‘living law’ of dowry in terms of *sadācāra* (good custom), though it is more often simply referred to as *dharma*. The analysis thus further examines the futility of banning dowry in the light of marital expectations old and new.

Academic writing has traditionally linked dowry to the process of Sanskritisation; which is the gradual acquisition of higher caste symbols by members of lower castes and classes seeking upward social mobility (Srinivas, 1984: 7-14), emphasising that this perpetuates patriarchal structures. This writing remains incomplete in its assessment of dowry as a problem in the historic past. Though existing research (Witzel, 1995) has been hazy about the extent to which dowry was part of ancient Indian society, the academic discourse positions its approach to dowry as a bad custom. It assumes that in an early egalitarian society “dowry in a mild form” existed (Witzel, 1995: 7). However, there is a serious gap in our understanding of how and why dowry exists as a persistent player in modern marriages. This lacuna is also addressed in this thesis. There has been additional controversy about whether or not dowry may be linked to traditional marriage practices at all. These arguments have failed to adequately address the causes for the persistence of dowry. My thesis aims to redress this loophole in an academic analysis of the ‘dowry problem’ by making the necessary conceptual link between modern, medieval and ancient marriage practices that formulate and embed dowry within Indian society.

As noted above, one of the reasons for the urgent need for a thesis of this nature is that recent research has denied the link of modern dowry to traditional and ancient marriage practices, which confuses the background and context to the further study of dowry in the historic past (Thakur, 1998; Oldenburg, 2002).²⁶ My research therefore must

²⁶ Dr Mahesh Mehta and Dr Bal Ram Singh, University of Massachusetts categorically claimed that dowry had no roots in Indian tradition (Friday, 3rd January 2003: 6th International Conference on dowry, bride burning and son preference).

also address claims that, “there is a widespread view that Hindu scriptural traditions underwrite dowry transactions. Our research so far shows that this is not correct” (Thakur, 1998: 212; Witzel, 1995: 1), sustained efforts of this nature continue to try and dissociate dowry from Indian history, implying it originated during British rule; as a by-product of asymmetric land revenue taxation (Oldenburg, 2002: 12), arguing that by creating a new economic policy during the British Administration, land rights took on a different character, alien to the indigenous understanding of the ownership of the village (Oldenburg, 2002: 132).

In response to these recent academic assertions this thesis clearly argues that within the ancient textual tradition, found in what can be called the ancient cultural or ritual texts or *śāstra*, there are indeed underwritten expectations that influence normative behaviour to uphold the practice of dowry as part of a good marriage. Part of the problem may well be that research to date has focussed too much on the gruesome consequences of the dowry problem, and not enough on the factors responsible for it. Even among research on the causes of the dowry problem, too little importance has been given to questions of pre-marital arrangements over property and expectations of dowry inherent in marriage negotiations. In order to reveal the various causes that perpetuate dowry, the analysis here focuses on traditional expectations before marriage, contained in the ancient texts, as well as their interpretations in recent academic writing, before examining the text of the modern anti-dowry law and the resulting case-law. A study performing this function is clearly and urgently required.

Although dowry is an economic practice, it has rarely so far been studied or been defined with an economic model in mind.²⁷ It is the intent of this thesis to provide a backbone to future research in this area, to motivate research and future policy guidance to better understand the functioning of dowry as a necessary determinant in modern marriages in Indian and South Asian communities. It is hoped that this intensive background work into the traditional normative content of dowry as a custom, with specific reference to law making and social practice will lead to a better understanding of the inter-linked issue of dowry-related deaths. Mine is neither a legal nor an economic

²⁷ However, see Bisakha Sen’s (1998: 75-96) analysis of dowry in economic terms, in an attempt to answer just this question: “Why does dowry still persist in India? An economic analysis using human capital”, which makes an attempt to raise and answer pertinent economically charged research issues, which must be further addressed by new research.

thesis, but it operates within the area of law making, to understand an economically charged custom.

1.3 Methodology

The methodology employed in this thesis follows a two-pronged approach already noted but further stated as below; the nature of the texts themselves will be reflected in their examination. Due to the multi-layered evidence which comprises the field of this study, the analysis follows a non-linear, inter-disciplinary path to better suit the sources. It is also important to briefly outline how this approach will incorporate analytical tools from varying disciplines in order to examine the tension between text and custom. Therefore, from the discussion in section 1.1 and 1.2 above, the following research questions are raised:

1. How important is the textual tradition of India to the conceptualisation of a living law of dowry as compared to statutory law?
2. What is the role of 'custom' in dowry practices?

Exploring these questions may inform current dowry-related legal and social debates surrounding practices related to dowry, or more specifically the giving and receiving of dowry. In order to tackle the answers to these two broad research questions several methodological tools are used. Two relevant areas influencing the conceptualisation and practice of modern dowry are analysed here in particular:

[1] The interaction of tradition, traditional cultural text and custom in shaping the perception of dowry and its practice. The ideal of *dharma* in the text and the reality of custom on the ground and their interaction are therefore crucial to consider. This is carried out through chapters 2, 3 and 5.

[2] The interaction between law and society in India today is analysed as another tension between textual ideal and social reality. This is charted through the evidence in chapters 4 and 6.

This tenuous relationship that appears to maintain order and harmony through written rules is examined in terms of the ideal and the actual; the ban on dowry co-existing with the persistent practice of dowry itself. Different from the earlier manifestation of ideals in the older textual material, today we have a new conflict created by the social engineering agenda of the law. In an ancient society influenced by concepts of joint family property, individual rights may not feature as important at all. It appears

that the harmony of the wider group, particularly the Hindu joint family, which is all important. There is therefore little conflict. The fact that dowry as a custom might not be as problematic as it has been made out to be by confused attempts at lawmaking, is important to note as I emphasise that modernist law making on dowry has introduced a conflict of expectations which cannot be resolved as originally planned. In fact, as stated above, it is important to explain why and how in the specifically Indian socio-legal context law demands one ideal and society continues to conform to another in the matter of practising dowry.

A brief note on the sources employed in the research of this thesis is vital to set the methodological tone here. The primary sources record in extraordinary detail the concerns of a small-scale mobile, non-sedentary society. In the search for dowry through this vast material the research needs to remain focussed on expectations rather than linguistic clues linked directly with the custom alone. It is worthwhile to further identify what this thesis means by the term 'text' in the discussion that follows. All our texts from the ancient period have a religious leaning in some or other sense of the word. For want of a better term this thesis regards these as cultural texts, thereby widening their purview from a purely religious one. Each type of text deals with a different aspect of religious, cultural and sometimes domestic or even secular life. Further, the towering collection of translations which accompany these tomes must also be made to count. Because both secondary and primary sources can uncover the conceptualisation of dowry over time, the views of writers records the preoccupations of their time in footnotes to history.

In this thesis I deal with two layers of texts, which for convenience I have delineated into two broad categories: traditional cultural texts and modern legal texts. First to describe what is presumed to be immediately accessible and known in the modern context; the modern legal texts encompass the juridical literature of modern India, the Constitution, the Hindu Marriage Act (1955), but far more specifically the Dowry Prohibition Act (1961), the Dowry Prohibition (Maintenance of List of Presents to Bride & Bridegroom) Rules, 1985, and all the various amendments of the dowry law during the 1980s (see Menski, 1998). Further, the latest layer of these modern legal texts is the Protection of Women From Domestic Violence Act, 2005 and Protection of Women From Domestic Violence Rules, 2006.

Second, the traditional cultural texts are further sub-divided into three categories in order to access them more easily, into ritual, legal, and literary. It is worthwhile to note

the classification of the ancient texts, which form the primary sources for this thesis, within these three categories for non-specialists. Broadly categorised for convenience as ritual, legal and literary, here is a brief description of each category:

Ritual:

What are considered the very oldest texts in the vast collection of this ancient culture are the four Vedas; the *R̥g*, the *Sāma*, the *Yajur*, and the *Atharva*. These four collections comprise verses dedicated to ritual formulae for pronunciation and recitation during ritual ceremonial practices both private and public. While the majority of Vedic hymns were to be used in public rituals designed to promote order in the macrocosmic sphere *śānta*, certain later layers of Vedic text seem to focus more on the microcosmic dimension and leads towards a focus on *dharma* and thus private ordering. This is found especially in the marriage hymns of *R̥gveda* X.85 and *Atharvaveda* 14, which are examined here in some depth (chapter 5).

Legal:

What has been classified for at least a hundred years now within the wider academic community and considered as law codes are not just judicial or legislative codes in the ordinary sense (Jamison, 1996; Menski, 2003). Here we deal with *dharma* texts that are collected under the categories of *śāstra* and *sūtra*: the *dharmaśāstra* and *dharmasūtra* literature.

Literary:

The Sanskrit epics, in particular the *Mahābhārata* (MBh), qualify traditionally as *dharma* texts, though ordinarily considered the realm of folklore and myth. But we also consider the *Ramayana* briefly. Both sets of texts serve as illustrations of *dharma* and thus as manifestations of *sadācāra* (Davis, 2004).

Under these three broad categories I have classified the literature from the ancient period, for the purpose of this introduction and further for a more detailed analysis in chapter 5. This examination will aid the understanding of what this thesis aims to achieve in terms of reviewing the primary textual sources for the purpose of this research.

In this thesis I refer to Professor Ronald Inden's extensive research of commentarial sources on medieval cultural categories maintained into contemporary times by Bengali society. These textual sources are relevant here as they specifically outline the transactory nature of marriage and the mobility of caste and clan rank through

marriage in medieval and modern society. The substantial sources from this medieval period make it possible to relate similarities to the old Vedic material with which most of these commentarial texts claim allegiance. Pertinently, these texts continue to be used for modern day marriage ceremonies, and are therefore vital clues to the nature of the mindsets at play. These genealogical records or books of clan rank of the *Brahmans* and *Kayasthas*, which form the bulk of the evidence for attitudes to marriage in medieval Bengal, are contained in what have been called *kulaji*, *kula-panjika*, and *kula-karika*. Written in Sanskrit, and sometimes also in Bengali these texts are considered the corporate property of the sub-castes. They are still recited, usually from memory, at marriages and kept updated by professional genealogists known as *ghataka*, who are a sub-caste in themselves.

A caution on these primary sources is worth noting before we proceed. There is no iconography or visual imagery available for the people we are putting under the microscope in the earliest period of our study. Therefore there is an accepted paucity of direct testimonies,²⁸ and of observations,²⁹ of the men and women about whom we are concerned. Our primary sources are completely oral or verbal, committed to textual form in arbitrary fashion across millennia.³⁰ The character of these texts is nearly always assumed to be religious,³¹ and their preservation and propagation is owed to diligent transmission, at first orally and then through writing, by an elite socio-economic class. In an attempt to transmit the verses we see today that unaltered and unadulterated extreme mnemonic devices were utilised so as to preserve every syllable. These have functioned as self-checks, it is assumed. But as has been noted (Jamison, 1996: 7), these devices are only as good as the next generation. We must take note of how this transmission was orchestrated through quasi-official organisations, the *gurukuls* or schools, passing from

²⁸ As we will see in chapter 6, the compelling nature of a woman's dying declaration, either recorded by a social worker, police officer or in some poignant cases scrawled on the victim's own body in a desperate attempt to have their version heard. During the early period of our study we sadly have no such records.

²⁹ In modern day cases we have the verdict of judges, which guide and track the overall nature of society's abhorrence of this custom, but its absolute frustration at being able to sensibly be rid of it. Again, we have no such accounts available to us from the ancient period.

³⁰ In fact Jamison alerts our attention to the fact that this nature of the ancient texts, particularly of concern when accessing gender studies in non-Western cultures is "more often an anthropological than an historical enterprise." (1996: 7) This assertion is relevant to the methodology of this thesis as well.

³¹ Historically, it seems, the ancient Hindu textual material is continually referred to as primarily 'religious', but Menski (2002) has warned that this may be an inappropriate and entirely misleading strategy, since the religious and the secular co-existed in Hindu thought and were also expressed in different words for Truth, namely *rita* for the invisible side of things, and *satya* for the tangible and visible aspects.

male teacher to mostly male students every generation, with a specifically patriarchal focus. What was the role of women in this preservation, if any? And, as is often assumed with oral traditions that they tend to operate in the inner sphere, informal and “non-institutional” under the sculpting hands of the womenfolk, this particular society was notably different. This domain of words and stories and of transmission and dissemination was the mainstay of the men in this oral tradition. In fact the Aryan oral tradition is quite the contrary of other oral traditions,³² in being “regimented, institutionalised, and purposeful” (amison, 1996: 7-8). In fact it may even be said that a text required the stamp of orthodoxy in order to survive, as we evidence in the case of the *Māna a Dhar a - ā stra* (MDS) in particular. The likelihood of the intervention of influence of women in this sphere, therefore, given the patriarchal nature of the work, seems highly unlikely.

Universally the phenomenon of marriage is marked by numerous related financial arrangements (Westermarck, 1921).³³ In the South Asian context modern dowry has been vigorously discussed and virtually demonised, more recently as a form of human rights abuse. In its ‘good’ form dowry represents and is conceptualised as property brought into the new marriage by the woman, not only for her own benefit and status, but also for her new family. In such scenarios there is a high likelihood that a marriage will conform to the ideal popularised by modern Indian society, today prominently through media such as television and film.

In its ‘bad’ form, dowry takes the much-criticised and rightly criminalised practice of property extorted and demanded by the groom’s family on the occasion of marriage, with the expectation that such property then becomes owned by the husband’s family and, in extreme cases, the woman herself becomes a form of property. In such scenarios a marriage may still appear to be successful, however new research shows that so-called dowry problems may not be related to property and financial matters (Wyatt, 2008). If they continue to exploit the ‘bad’ form of dowry by continuous demands and

³² See Pinkola (1987) *Women who run with the wolves* for accounts of folklore and its function in other oral societies.

³³ Dowry given at marriage to either one of the bridal couple or both, and features as an almost universal customary tradition in various societies. The thesis argues that this set of marital expectations practice, in the form of dowry does not appear to be a problematic social custom in any other society to the extent that it does in Indian communities at home and abroad. Dowry deaths and dowry-related problems are not confined to Indian communities; Pakistan and Bangladesh have reported similar problems in their communities at home and abroad, which are collectively called the dowry problem in this thesis.

extortion there is the danger of a breakdown in marriage. The main accusation against dowry is that it commodifies daughters, and it is held directly responsible for the death of thousands of brides, young and old. These two disparate forms of dowry, ‘good’ and ‘bad’, are in social reality represented by a whole host of variations in form and practice. For instance the under-researched topic of marriage presents relating to HMA, section 27 (Rose, 2003) indicates that important insecurities exist in terms of the ownership of such presents made at, and following marriage. Linked to this, the wording of section 6 of the DPA of 1961 and its amendments demonstrates that presents made in keeping with tradition, and to both bride and groom, are legally not defined as dowry at all. In fact various forms of presents are construed as expected human behaviour at the time of marriage, to strengthen human connections and interlinkages. If dowry is indeed portrayed as such an evil custom, then why do Indian communities continue to practise it in some form or another to date, in spite of a legal ban?

This thesis is not a legal analysis of the dowry problem, but seeks to understand how apparently presumed textual and value contradictions in different sets of texts, ancient and modern, cultural and legal, are combined into a ‘living law’ that continues to enjoin the practice of dowry as *sadācāra*. For clarity, *sadācāra* may be understood as the social norms crystallized in the concept of ‘good or model behaviour’ which is tested in constant consideration of situational relativity against the yardstick of *dharma*; in fact *sadācāra* virtually embodies *dharma* (Menski, 2003: 31).

This thesis adheres to a law-based methodological approach taking forward Derrett’s (1976: 47) assertion that a much-needed collaboration between anthropologists and lawyers has been lacking. He observed in keeping with his earlier belief that the “anthropologist is not concerned with what was the law, nor with lawyers’ versions of what law is ideally (as the courts see it), but with what actually goes on in people’s minds” (*ibid.*: 5). This ties in directly with the need to understand what people perceive as being bad and good, and how they act in accordance with this, as represented in Fig 1, (below). Derrett brings to the fore a major problem faced by research attempting to employ both anthropological and legal data: the chasm between the people’s and lawyer’s conceptualisations of law.³⁴

³⁴ See also Holden (2003, 33-9) for an enlightening discussion on methodological miasma of issues when tackling these very research issues in fieldwork application.

1.3.1 Theories

In terms of a specific theoretical approach this thesis examines a range of ideas. For instance, traditionally, history has concentrated on the study of past societies, while sociology and ethnology examined those of the present; respectively treating modern and traditional societies. These partitions still exist, but they are gradually becoming less exclusive (Rouland, 1994: 1). To uncover the links in an ancient context our only evidence is the literature preserved from a historic period that has long passed. Part of the responsibility of this thesis is to understand the role of this literature in its historical and legal significance without engaging in the construction of fiction. Therefore in chapter 2 along with the discussion centred on the invention of tradition (Hobsbawm, 1983: 1), one section is devoted to examining the nature and character of the texts in question: What do they represent, social reality or ideals, or an admixture? Do they encapsulate custom? How explicit are they and are they designed to be in terms of telling us about social realities? I argue that from the earliest verses what has been preserved is a complex combination of custom and idealisation which seeks to influence 'right' behaviour and to thereby become a norm, although it is imperative to consider that these norms still remain fluid and flexible.

The top end of the triangle examines what exerts a stronger influence on the actions of people in the performance of marriages and the practice of dowry: The State (as an enforcing body) or custom or law; the other two forces acting on the current role of dowry in Indian society are marriage and domestic violence. People negotiate constantly.

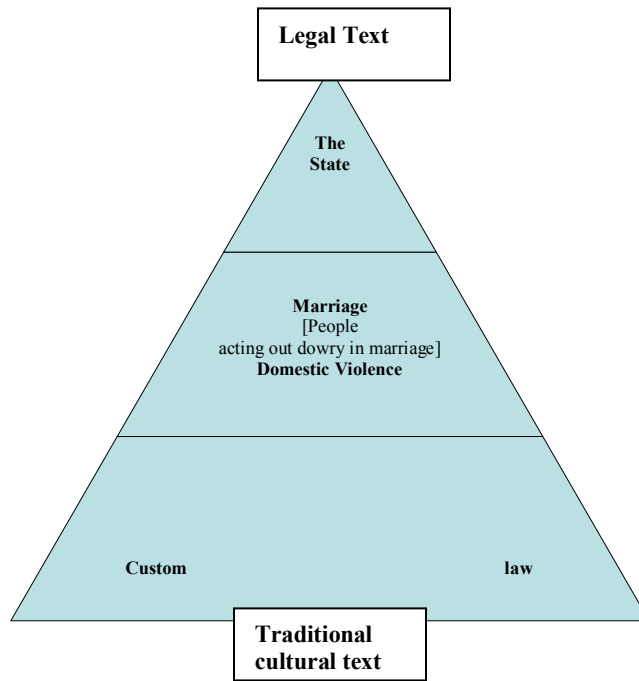


Fig. 1 The tussle of texts

In setting the ‘good’ dowry next to the ‘bad’ dowry I suggest that, at the simplest level, there is a disjuncture between the governmental/policy view that *all dowry must be bad*, or potentially so, and the “customary” view that, in any given community, “our” dowries are good. It appears possible that this kind of contrast then repeats itself in other parts of the social whole; where one set of people believe that it is only some dreadful “other” people who engage in the ‘bad’ dowry, while their own practice of it is perfectly acceptable. Thus, distinction attaches itself not just to the giving of dowry, but to the giving of dowry in an authentic, ethical fashion, in fact in terms of specific *sadācāra* which is virtually ethnicised. The notion of ‘goodness’ is then not simply a feature of the act but of the actors themselves, and of their subjective perceptions. Is this perhaps a way in which families simultaneously support anti-dowry laws in principle (because of these other “bad” dowry givers/takers) while continuing to give “good” dowry themselves?

These two forms of text have been widely presumed to be contradicting each other in essence, with regard to the practice of dowry as collective conscience or *sadācāra*. However, this thesis examines to what extent these presumed textual and value contradictions are in socio-religious and cultural reality amalgamated into forms of ‘living law’ that are part of custom, within a patriarchal context, but do not necessarily disadvantage women. This has however been misunderstood so far. Also, due to a vast number of the ancient texts remaining un-translated they continue to remain inaccessible

to the non-specialist. Unfortunately this wealth of material has not been ploughed for the information it can provide on and about women in the worldview of ancient India.

In terms of sociological theory this thesis touches upon several key authors. First and most importantly in chapters 2 and 3 I consider the validity of Emile Durkheim's (1979: 39) *sui generis* approach to religion, and further his notion of the 'collective conscience' of a society as the totality of the beliefs and sentiments common to the average members of that society, which forms a determinate system, almost with a life of its own (Fields, 1995: 5).³⁵ Further, another of Durkheim's ideas about social organisation; that of "collective conscience" overlays the notion of a common idea of good behaviour within a community, and is relevant to our discussion here because of its co-relation to our core concept here of *sadācāra*. Durkheim (1979: 79-80) in his explanation of a social mechanism of what holds the group together arrived at an understanding of "collective conscience".³⁶ He uses this term to identify a body of beliefs, practices and customary arrangements and enactments which tend to be held as common knowledge by all members of society. This set of beliefs, in his view, are diffused throughout the society, they not only define social purposes, but further imbue actions with meaning and generally go toward structuring a pattern of life. In Durkheim's own view, this common conscience develops according to its own laws and is not an expression of individual conscience, or in our Hindu sense *ātmana u i*, and is therefore in an analytical sense separable from it. Therefore, collective conscience may be seen as global reflection of the Hindu concept of appropriate group behaviour. This corresponds almost entirely with the ancient Hindu category of *sadācāra*.

In chapter 4, the research is informed by Tylor's (1873) analysis of religion and Leach's (1938) transmission of myth theory.³⁷ Levi-Strauss's (1969) approach to the fraught nature of gift-giving in pre-literate societies is also considered here. Further, this thesis through the analysis in chapter 5, considers Mauss's (1925) original insight on the socially sanctioned distribution of gifts and other tokens of relationship, fraught with historical and structural significance as these things are, may be an irreducible element in

³⁵ Durkheim's first edition of *The Elementary Forms of Religious Life* (Paris: Alcan) appeared in 1912 and is notably a seminal work on sociologically informed philosophy of society, which fits the discussion in this thesis in terms of an underlying, guiding methodology. See Karen Fields's (1995: xv-xxiii) entire Introduction for a qualitative analysis of Durkheim's position in sociological thought.

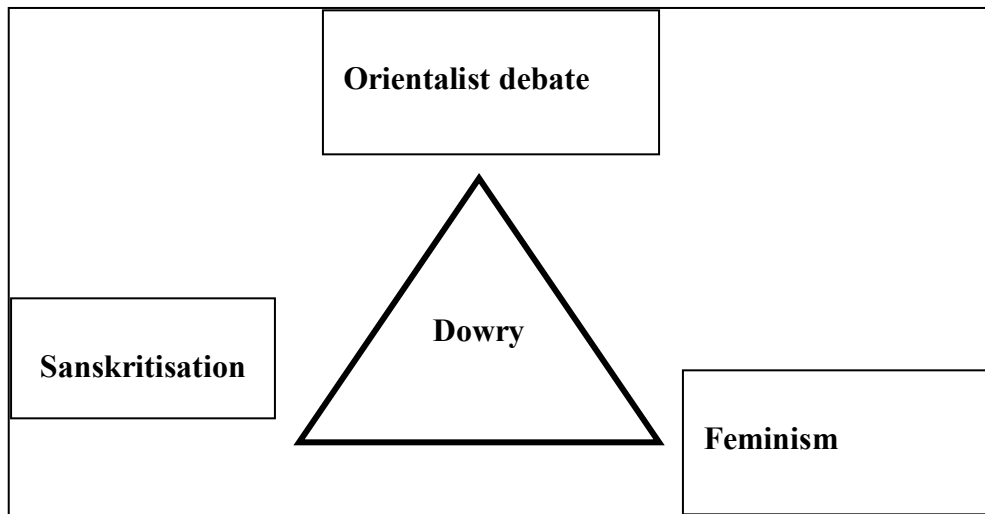
³⁶ This is a central concept within Durkheim's (1979) thesis on the division of labour in global society, for a further discussion and extended examination of common conscience see Lukes (1971: 183-209).

³⁷ Both Tylor and Leach are the original publication dates, however, the bibliographical references here are more recent editions.

human culture. The pot-latch and caste system are perhaps instances of general principle, which underlie behaviour sanctioned and governed by these albeit fluid rules. The universal relevance of these systems is clearly defined in this thesis in chapter 5. In this analysis, on the basis of the textual evidence, both primary and secondary I argue that the dowry system coincides with the pot-latch system of gift-giving in several ways. Bronislaw Malinowski's (1929) "participant-observer" methodology,³⁸ must be noted as a mode of understanding my own culture, from the anthropologist's desk in chapter 6.

As the following conceptual model highlights, three broad theoretical approaches present the lens through which to study the evidence of a) Sanskritisation, b) Orientalism and c) Feminism on the concept and phenomenon of dowry. These broad theories are used throughout the text of the thesis, inlaid within the analysis. The conceptual model below, maps the three main theoretical thrusts of the thesis, explaining the approach of a three-way tug of war similar to that between custom, law and society, as shown above (Fig. 1).

Fig. 2 Conceptual Model: The theories guiding this thesis as a framework



These three approaches allow the theoretical framework to be meaningfully incorporated into the text of the thesis, rather than to form separate literature review sections. The six chapters and the conclusion fit around these larger theoretical issues. These theories

³⁸ Malinowski's "participant-observation" methodologically refers to the principle of internal observation by the anthropologist or social scientists, by being completely "immersed" in the culture they are studying (see Malinowski, 1922).

overlay the central argument of the thesis, which is that the custom of dowry is and has been and continues to be a socially sanctioned necessary part of Hindu marriage. There will be a considerable overlap between theories, much like the historical-anthropological process of law-making.

1.3.2 Concepts

Though it is customary for academic research to follow words as a smoke trail, I will examine expectations and patterns of behaviour involved in the negotiations for marriage, which precede the actual ceremony. I can therefore study how and why the dominant dowry model has come to occupy centre stage and is held as exemplary. The question is: “What is the role of the law in this context? In fact, is there a role for law?” has in the past been expressed (Menski, 1997: 68). In order to tackle this tussle meaningfully (see fig 1, above) one must note the need for a dialogue between anthropologists and lawyers, as chapter 2 discusses.

At this stage it is important to briefly examine the concept of ‘legal pluralism’ and its significance to the present discussion. The basic underlying notion of this approach, meaning that law is just one feature in a social field, and law takes therefore many forms, was previously expounded by the American legal anthropologist Sally Falk Moore (1978), whose field-based theoretical study is a major source for several writers on legal pluralism. An important article “Law and anthropology”³⁹ highlights the inter-textuality of the two, “every good ethnographic description contains a great deal of legal material, whether or not it is explicitly called ‘law’...”. This is the starting point, then, for a social understanding of the literature of ancient India and its anthropological relevance to legal analysis today and it highlights the particular approach employed in this study.

Additionally, I consider how families negotiate between official laws of the state and custom in how they practise dowry. It is necessary at this point to briefly examine the concept of ‘living law’. Ehrlich (1936: 486-506) early in the twentieth century established this concept as prevalent in every human group. It signifies a tendency to include in law a certain type of conventional norm; Weber (1967: 233) characterised ideally “the particular principles underlying the religious ethics” that limit the structure and function of secular law. Notable for the present purpose is Malinowski’s (1926: 46-9)

³⁹ Originally published in 1970, it appears in reprint form in Moore (1978: 214-56).

discovery of the social mechanisms of “publicity” and “reciprocity” as the essence of law in a society without government and formal law.⁴⁰ This inclusion and its negotiation is a gradual process, India is an excellent example of a country where colonial legislation has laid the roots for a fascinating specimen of ‘living law’.

To add a reflexive note here, however un-politically correct or sexist it may seem today, in the late 1980s eminent Indian social theorist Srinivas (1984:7-8) highlighted the advantages of dowry being analysed by women social scientists, since the segregation of sexes continues to be a marked feature of Indian society, particularly its more traditional sections. His assertion is that “women social scientists might have better insight into the kind of mental world in which the daughter-in-law or mother-in-law lives...”. In my case I refer also to the issues centred on being a desk-based anthropologist immersed as participant observation demands in the culture I address (Malinowski, 1922: 10). Malinowski’s “participant-observation” methodologically refers to the principle of internal observation by the anthropologist or social scientists, by being completely “immersed” in the culture they are studying. This implies participating as wholly as possible in all everyday activities while observing the interactions of the informants.⁴¹ Particularly relevant are Srinivas’ observations on the social scientist’s dilemma while addressing dowry:

“Dowry is in many ways an archetypal institution, for it illustrates the kind of problems which the social anthropologist/sociologist studying his own society faces frequently...The first and most obvious problem is the ambivalence which dowry rouses in the sociologist studying it. On the one hand, there is the feeling that the institution is an unmitigated evil and that it needs to be destroyed root and branch, and at the earliest opportunity, and on the other hand, the institution demands to be understood, its many ramification [Sic.] traced, and its regional, caste and other variations recorded. The sociologist studying dowry cannot help being fascinated by it, and being impressed with its strength and resilience. But this very fascination with the institution and his awareness of its strength might result in his being accused of being a reactionary who wants the institution to remain.” (Srinivas, 1984: 7)

⁴⁰ Hoebel’s (1954: 97-126) contribution of data on the function of “jural postulates” among primitive groups is noteworthy here.

⁴¹ Malinowski’s most significant contribution to the science of anthropology remains his study of the Trobriand islanders (most notably the *kula* ring exchange pattern) as presented in his first publication *The Argonauts of the Western Pacific* (1922). With R. Radcliffe-Brown Malinowski founded the modern approach to British anthropology. His specific theoretical contribution is functionalism, as opposed to Radcliffe-Brown’s structural functionalism.

Noting these worthy pointers as ear-marks in my research notes I now delve further into how these theoretical issues may be addressed in the course of this thesis, by outlining the layout of this work.

Within the wider context of Indian marriage laws, the thesis accounts for the phantom of dowry, which neither has a clear-cut definition nor an ontology within textual representations, yet has remained a powerful player in the discourse of marriage laws (chapter 4). While engaging in a discourse of what dowry is and how it has formulated itself to become an entrenched partner to most Hindu, even Indian marriages, the thesis explores particularly the role of tradition and text as agents in shaping the notion of dowry, and its indisputable position in Indian society today as an uncomfortable *sadācāra*. The canvas against which this custom is set illustrates the rather important role ‘tradition’ continues to play in shaping India’s legal modernity, which apparently is not just dominated, as we assume for ‘Western’ legal systems, by state-centric and top-down formal legal regulation.

1.4 Thesis structure

Each individual chapter carries a review of the literature relevant to its content and context, thereby negating the need for a comprehensive stand-alone literature review. In this way it is possible to outline the particular theoretical issues of each segment before highlighting the additions to knowledge being made through this study. Further, by concentrating on individual reviews of academic material and sources, the thrust of each chapter is defined clearly, focussing on subjective analysis as this study poses an interdisciplinary approach. What follows is a brief expalantion of the main thesis structure.

Chapter 2 deals in some detail with the traditional, ritual textual material highlighting the tension between cultural texts and social tradition in relation to defining legal precepts. It examines legal pluralism as well as the effect of tradition and text on each other. Here I also highlight the importance of *sadācāra* and the fact that its hold on society is almost as strong as, if not stronger than, the rule of law. Crucially this chapter also acts as the methodological hinge for my thesis. I begin by placing my research within the Orientalist debate and its subsequent critique. Positioned at the centre of the thesis **Chapter 3** functions as a guide to provide the legal background for the research questions in this thesis. Further, it examines the backdrop against which dowry works. The theoretical relevance of legal anthropology is considered here to place the discussion

in its academic context. The wider research question is whether one can root out a custom by applying the force of law? This leads directly into the discussion on the nature of law in India, and an understanding of what is legal. The analysis in **Chapter 4** examines the problems of defining dowry adequately, both in terms of legal application and for academic argument. The current legal definition of dowry does not take cognisance of the ongoing payments incumbent on the wife-givers for the duration of their daughters' life. The conceptualisation of dowry as *sadācāra* is dealt with in detail in this chapter. This involves a deeper investigation of the influence of custom in India, as compared to that of official law, on the collective conscience of the people. The hypergamous ethos is more fully described with reference to the excellent anthropological ethnographies that have gone before.

In **Chapter 5** dowry expectations are examined as a part of marriage arrangements. The ancient Hindu text from the field, as it were: in particular verses contained in the Vedic marriage hymns, *da* (RV) hymn 85 in *mandala* 10 and the *Atharvaveda* (AV) book 14. The analysis of the textual evidence follows a chronological path, carefully dusting older interpretations and looking afresh at the original material itself. Interestingly, it is the fullness of the minutiae and the detail these texts provide which makes their relevance to this thesis invaluable. By ploughing this material extensively it is possible to delineate and take note of the things that these texts themselves do not know that they are saying. As Jamison, (1996: 10) notes,

“The women acting in the ritual are not the point of the texts; as we will see, they are fairly marginal at least in terms of the composers’ focus. They are neither demonized nor divinized as fictional exemplars so often are. They simply sit in the background, waiting to perform their little tasks – carry the little pot of water or exchange glances with a priest. But when we assemble the little tasks, they produce a remarkably telling conceptual portrait.”[emphasis added]

It is this conceptual portrait that we seek to align alongside the emergent conceptual framework for the functioning of dowry as a custom within the context of Hindu marriage, because it helps a little way to understanding what we are dealing with in the bigger picture of answering the main aim of this thesis.

In **Chapter 6** the process of analysis begins with the anti-dowry law, examining to what extent it proves to be a misguided strategy to tackle dowry. This chapter takes into account not only the stated intentions of the legislators but also the major argument

which women activists have been fighting for: seeking to secure separate property rights for women. It may well become evident that the causes of the 'dowry problem' have not been sufficiently researched and have become intertwined with other gendered discourses. This chapter also contains examinations of current dowry cases, which have helped bring to light problems of application at the ground level. An in-depth analysis of the anti-dowry statute will aid the hypothesis of it being an outmoded strategy. The concluding analysis in **Chapter 7** binds the various threads of the argument together, reiterating the customary nature of dowry as an institution. This thesis demonstrates that traditional cultural texts reflect and assert ideals rather than reflecting social reality, and suggests that modern legislative texts possibly have the same effect. Therefore the acceptance of dowry in defiance of the modern legal system is not interpreted as blatant lawlessness, but rather as an example of a varied perception of law.

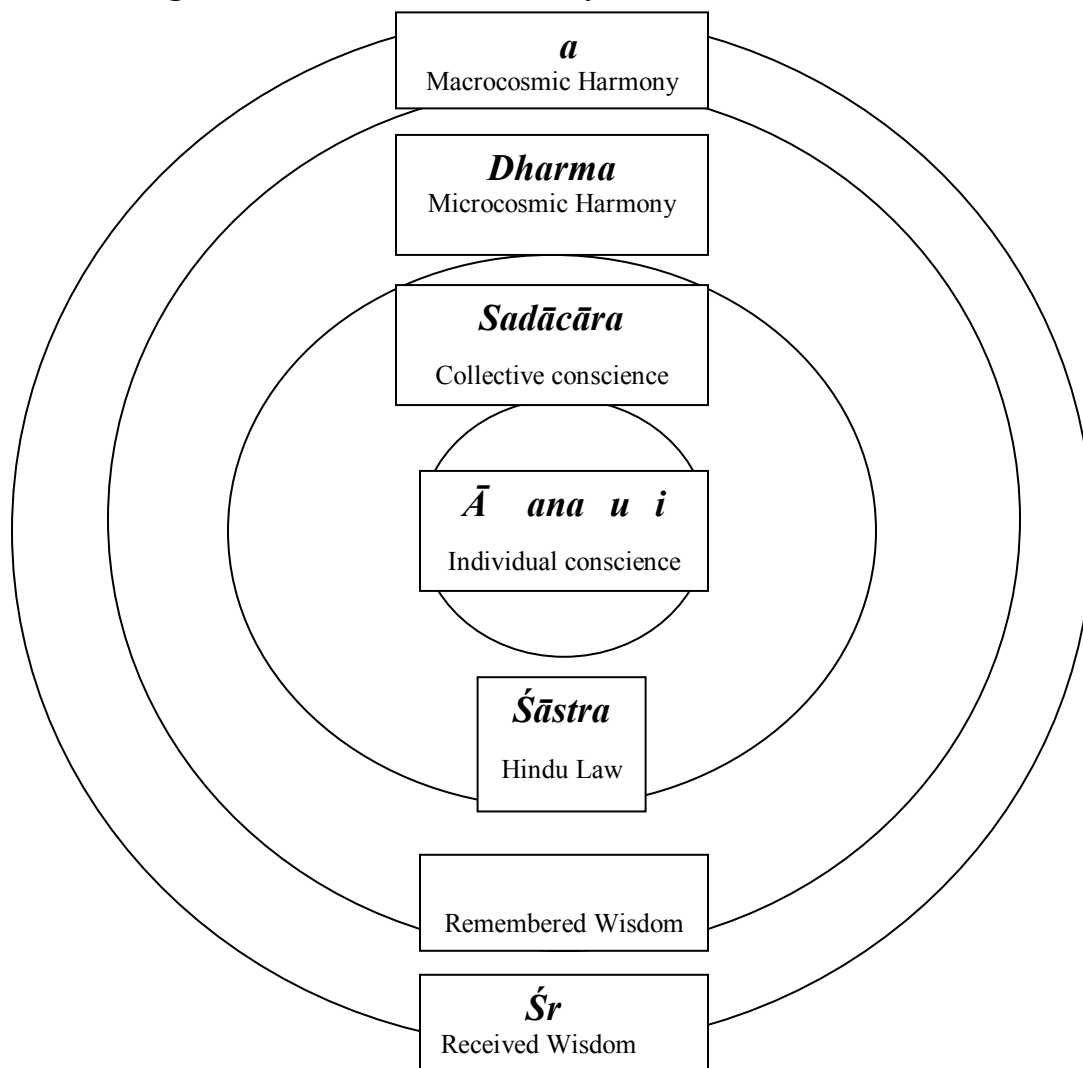
Having sought to understand the functioning of the dowry law and its problems in the current Indian context, with the aid of messages from the past, this thesis ends by exploring the idea that modern law reform must consider alternative methods of seeking to protect women, not just against abuses of the dowry system but against other forms of gendered violence. According to the findings in this thesis therefore, the climate that allows dowry murder to occur as a by-product of the custom of 'bad' dowry, is also a product of Indian society, created by a similar malignant mindset, which must be understood if we are to tackle it meaningfully. In Sharma's view (1984: 71) as the girl is merely the carrier, in a modern context, is no longer seen to be as valuable as the wealth she brings. Menski (1998: 51) observes how this view underlines a significant characteristic of modern dowry. He highlights in particular the procreative potential, so valued in the past, is no longer inherently perceived in the highly prized terms of the past. But this remains unspoken because it is so "obvious to the insider". Here he succinctly clinches a crucial point, of extreme value to the crucial question of ontology raised by this thesis, why is dowry a phantom: When a custom, a tradition is of such import, and is so common a behaviour, it is rarely underlined in ideal terms within textual content: therefore no clear terminology exists for the practice; text or terminology has become practice. Instead the opposite behaviour is ostracised and black-listed, so as to enjoin the preferred behaviour, which within the society everyone is aware of and practises.

To begin the process of examination of the vast material before us, where the expectations lie embedded then one must proceed with the process of unpeeling. Firstly,

let us return to the notion raised at the opening of this chapter, where the core concepts of Hindu law were briefly mentioned. *a* as the cosmic blueprint for Order, followed by *dharma* as the macrocosmic blueprint setting out guidelines for human behaviour, how are these linked to textual ideals? (See 2.4 for further detail). If we examine the pictographic representation of an ancient society without iconography, the various forces acting on it, juxtaposing it with the artistic expression as seen in Plate 1: Circle of Solidarity,⁴² we arrive at the diagram linking the various layers of text to spheres of social and legal influence (below). In Hindu terminology we may explain this as the conceptual model that guides life in terms of the influence of *a* and *Dharma* on reality. For a fundamental understanding we may recognise *a* as the harmonising force ruling cosmic reality as Order. In similar terms *dharma* guides the order within the microcosmic universe applicable to human behaviour, thereby dowry behaviour. While *sadācāra* is the expression of a group's collective customary social conscience, *ātmana u i* is the self-regulatory essence of an individual who aims to live in harmony with the wider aspirations of her/his group. This last aspect of *ātmana u i* or individual conscience is managed by the self, but is acted upon by all the other forces in the field of law. It is therefore self-regulatory, mostly in consultation with the customary social collective conscience but at times individually, as the situation requires. In this sense, texts do not mimic reality they constitute reality anew; therefore tradition become interchangeable with text.

⁴² Historians believe that the Warli tradition can be traced back to as far as the Neolithic period between 2,500 BC and 3,000 BC. It has since travelled across borders and territories. Home décor products with Warli paintings have an international appeal and demand too. The Warli paintings essentially depict the basic principals of life which are main themes or the basis for any tribes' expression. Their major designs include the harvest season, celebration, wedding, rituals and births.

Figure 3 Circle of Solidarity in terms of *ā* and *Dharma*



Chapter 2: Methodology: Texts, traditions and custom

This chapter focuses on methodology and charts the course of textual anthropology to inform the wider argument and seat my research comfortably as a religious studies thesis exploring the legal dimension of a social practice: dowry. Textual anthropology refers to a means of overstepping the anxieties of ethnography and historiography to date by highlighting the anthropological validity of literary and ethnographic sources (Whitehead, 1995: 53). While the thesis examines the negotiation between custom and text in the understanding of legality in the context of India, this chapter principally focuses on the traditional cultural texts themselves, because it is crucial to understand the role of the Hindu traditional cultural texts within society as epitomised by the Vedic and later *s* literature. ‘Texts’ are collections of tradition.⁴³

The English word ‘text’ appears to derive from a root, meaning “to weave”, which corresponds interestingly with the Sanskrit term *sū ra* or thread (King, 1999: 63). It is in this sense that I use the word ‘text’ when so highlighted, to represent the basic thread of, what we might speculate to be intended as, thinkings and teachings. The legal aspects of this literature are analysed in the discussion in chapter 3. Here, it is important to note the anti-positivist stance of this thesis (Maine, 1986, 2-7; Inden, 2006: 29) at the outset. This thesis, as discussed in chapter 1 above, calls for a better understanding of the continuing tussle between Indian tradition and the historical effects of western-led administration. It is surely time for this tussle to be better guided by research efforts, maybe even to help resolve a ‘problem’ such as the dowry problem. The following arguments set the stage for a beginning to this resolution, at least in the analysis of dowry.

Crucially this chapter also acts as the methodological hinge for my thesis.⁴⁴ In examining the place of texts it is crucial to note the varying agenda of much of the research conducted on and around Indian traditional texts. Therefore I begin by placing

⁴³ When highlighted in this way ‘text’ implies the position of the early Indian literature being equated with the texts of other religious traditions, like the Qur’an and the Bible as irreducible containers of religion as opposed to fluid and complex oral systems, of which these are a product. Therefore when alluding to ‘text’, I do not necessarily mean a written text alone.

⁴⁴ Methodology implies a system of methods, rules, paradigms and principles used to organise an inquiry guiding the practitioner toward an appropriate approach to an analysis, evaluation, investigation and so forth. ‘Methodology’ does not inherently denote any particular sort of approach in criticism; however it is important to note here that some scholars find the connotation of ‘scientificity’ in relation to ‘cultural’ studies disagreeable.

my research within the Orientalist debate and its subsequent critique. The discussion here takes cognisance of the impact of Orientalism,⁴⁵ and of post-modernist debates prevalent in academic analysis centred on India. Further, Richard King's (1999) analysis of *religio* as representative of the practice of traditions and customs of one's ancestors informs the investigation of the concept of Hinduism as a religion, within which the customary notion of dowry is formulated and then embedded.

2.1 Textual anthropology: The Orientalist impact

My thesis focuses first of all on *Brahma ca* Sanskrit texts, characterised here as traditional cultural texts, which have been historically regarded as religious texts by early scholars. This is the first layer of text to be examined, the modern, legal texts are analysed in chapter 6 below. Propelled by a strong literary bias, western scholars interpreted ancient Indian data as religious "texts". Menski (2002: 112) comments and cautions that too often "we undervalue the elements of orality and traditional internal plurality and seek to indulge our Western fixations with scriptures, certainty and uniformity".⁴⁶ Indeed, it is noteworthy that a clear "literary bias exists within modern Western conceptions of religion" (King, 1999: 62), and this emphasis on written texts has had wide reaching repercussions on approaches to the study of traditional Indian cultural texts and Indology by both insiders and outsiders over the last hundred years, and continues to cloud the methodologies of analysis used to understand both ancient and modern Indian phenomena. With reference to the current debates within the fields of anthropology and history, in providing newer analysis of ethnographic texts and historiographical material it is worth noting cautions like Neil L. Whitehead's (1995: 53-54) that the tendency has been so far "for the limited historiographical scholarship that

⁴⁵ Orientalism as coined by Edward Said in his 1978 book of the same name refers to an entire discourse through which 'the Orient' is represented in specific terms by 'the West'. Said refers particularly to scholarship that, primarily during the nineteenth century, set about studying other cultures to describe, assess, categorise and label them. He defines the term thus: "Orientalism can be discussed and analyzed as the corporate institution of dealing with the Orient—dealing with it making statements about it, authorizing views of it, describing it, by teaching it, settling it, ruling over it: in short, Orientalism as a Western style for dominating, restructuring, and having authority over the Orient. ...My contention is that without examining Orientalism as a discourse one cannot possibly understand the enormously systematic discipline by which European culture was able to manage—even produce—the Orient politically, sociologically, militarily, ideologically, scientifically, and imaginatively during the post-Enlightenment period" (Said, 1978: 10).

⁴⁶ See Bennett (2004: 2), discussing a similar predisposition of writers on South African customary law being biased with the European mindset "to give a privileged status to the written as opposed to the spoken word".

has generally underpinned literary analysis of ethnographic texts to lead to an inadequate anthropological appreciation of what such sources may tell us”.⁴⁷ This thesis treats the traditional cultural texts as ethnographic record for the purpose of analysis in the absence of any iconographic or testamentary evidence of the period under survey, aware of the subjectivities of assumed or actual authors of such texts, and conscious of the fact that what the text is actually stating may be read in a variety of ways. An examination of the widespread ideology that dowry is ‘good custom’ or *sadācāra*, and therefore right to practice seems to have emerged from the spread of Sanskritisation. This process accounts for how and why a particular interpretation of the *Brahma c* textual tradition has come to shape ‘tradition’ more broadly, particularly in light of the hoary dichotomy of the great and little traditions in India.⁴⁸ I argue here that texts do not represent historic or prehistoric reality but instead ideals. This thesis essentially states that texts are ideological constructs.

The discussion here unfurls the layers of research devoted to the traditional cultural texts, while at the same time placing them in the chronology available to date as devised earlier by Kane (1961: xi-xii) and presented here as the Tentative Chronological Table (Table 2). Such tables run the risk of fixing fluid entities, providing an impression of firm dates, when in fact we do not know precise dates for the earlier layers of literature. Much time and effort has been spent working on such tables and chronologies. The present research is less concerned with the reliability of certain entries or assumed dates and data, but is critically interested in their virtually liquid or fluid characteristics, leaving almost everything open to interpretation, because texts are time-sensitive and context-specific, and in the Sanskrit context, as we shall see, the same word in one sentence can often mean something quite different in another place.

The efforts to ‘fix’ things are aided to some degree by the diagrammatic representation of the texts and their estimated period of composition/production based on

⁴⁷ Whitehead argues that to date anthropology seems to have inadequately understood and addressed the ideas of representation and textuality. Literary and historical theorists have remained unaware of the relevance of ethnological record as valid anthropological data within ethnographic writing (Whitehead, 1995: 53-74).

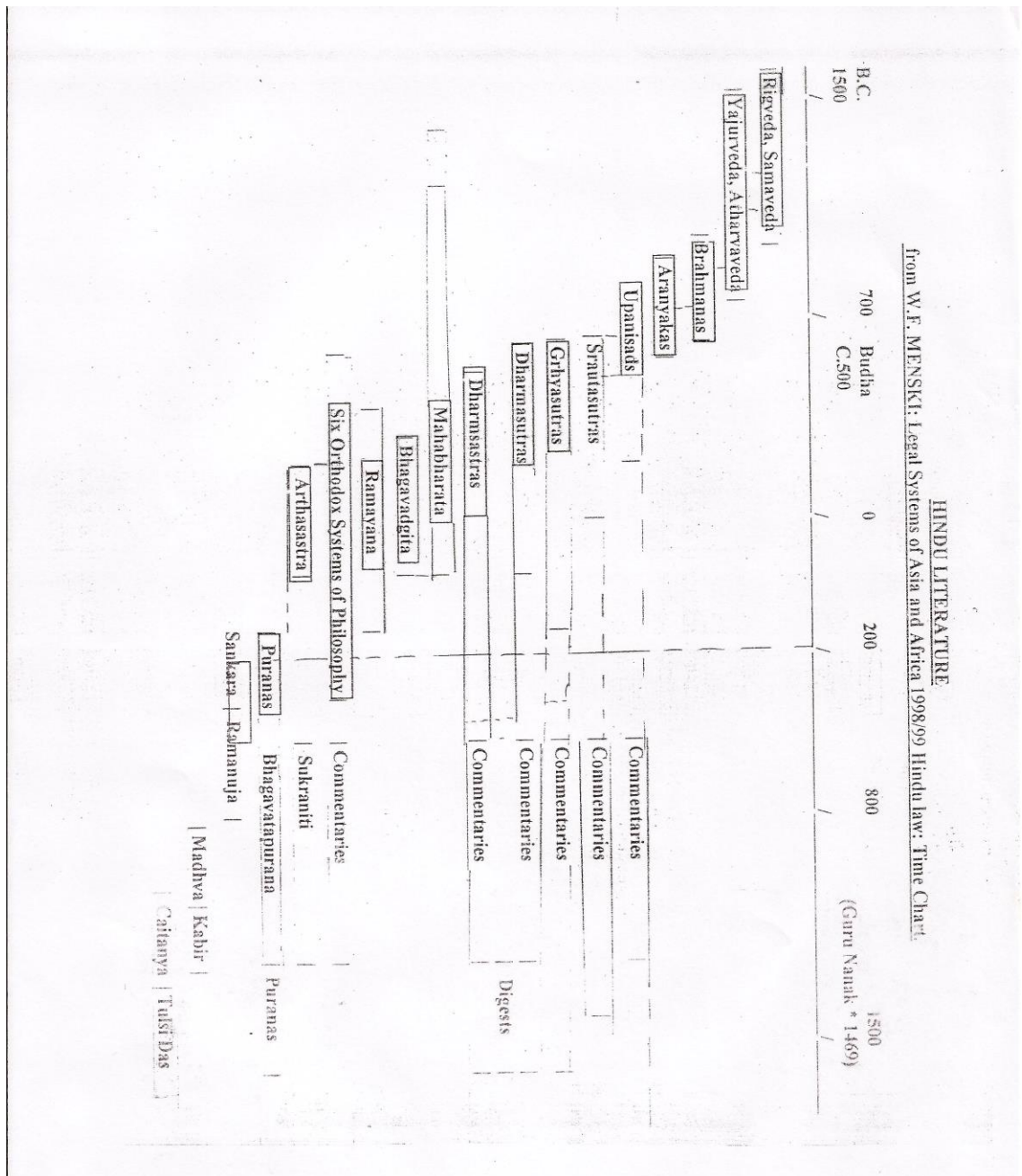
⁴⁸ See, Miller (1966) for an illuminating discussion on the great and little traditions in India, with specific reference to the oral traditions contained in the poetry of the “untouchable” Mahar community, who contest the Great tradition of dominant Hinduism by creating their own unique “little” tradition. This is not the place for a deeper discussion of these aspects of the great and little traditions in the context of Indian communities, other than noting the idea of a plurality of pluralities (Menski, 2011).

a chronological analysis suggested by Menski (1998/99) (Table 1).⁴⁹ Relying on either one still presents an incomplete picture, particularly as this thesis relies on a number of specific texts, not the wide corpus of literature as a whole. Taking these two sets of dates together, however, makes it possible to arrive at an understanding about why dating and incorporating the many layers of texts into any one cohesive chronology has been so far challenging, and remains so. Further, brief historical and geographical clarification of the vast period under survey makes it possible for the background to be set for this thesis. Finally, the construction of the position of Indian women within the debate is woven into the discussion as opposed to being presented in a stand alone section. After all the social reality this thesis seeks is one within which women appear woven into the backdrop.

The analysis here follows an ideological path set out by Prof. Inden in his conceptualisation of Indology and the Indological discourse as essentially idealistic (i.e. apolitical) and therefore limiting.⁵⁰ As he highlights the strength and power of these limits, “despite India’s acquisition of formal political independence, it has still not regained the power to know its own past and present apart from that discourse” (Inden, 2006: 15). This is where our problem lies. Not in definitions of the past but in recognising the present as a clue to what has been ongoing. As Daud Ali (2006: 10) reiterates, while reintroducing Inden’s early essays, Inden’s unique analytical approach in marrying anthropological and historical tools and methodology has enabled the possibility of evolving “both empirically and theoretically”, a more nuanced and complex historical account of ancient and medieval India. With this view in mind we may deconstruct the Orientalist debate with reference to Indology. Additionally, it is vital to bear in mind that the study of Indology was a contradictory combination of societalism, inherited from its largely British empiricist and utilitarianist past. This recognised and attributed Indian actions to social groups, i.e. the village, a linguistic region, religion, the joint family and

⁴⁹ This Hindu law time chart has been used as part of teaching materials for an undergraduate Society and Law class covering the Legal Systems of Asia and Africa, taught by Prof. Werner Menski, and also for an Area Studies Masters programme at the School of Oriental and African Studies, University of London. I am grateful for permission to use it here.

⁵⁰ This remains the case some thirty years on and is therefore relevant to the research here, although Inden’s paper “Orientalist Constructions of India” was written originally in 1986 (401-446). For a feminist perspective specifically on the potency and politics in the power of women’s expression and the local traditions of this contained in North Indian women’s songs, more specifically Rajasthan, see Raheja and Gold (1994: 182-85). See also more recently, Declan Quigley’s work on similar ideas of a segmentary state (1996; 2005). See also Menski, (2003: 42, 50). Most recently see Kaviraj, (2010: 12; 41; 80) on an excellent analysis of the evolution and perceptions of self-regulatory segments of statehood, in the colonial and post-colonial context with specific reference to India.



HINDU LITERATURE

Hindu Law: Time Chart

[From W.F.MENSKI: Legal Systems of Asia and Africa 1998/99]

even caste. The importance of the group was referred to as superior to the individual, as individualism in Indian thinking was considered a “bad” motive (Inden, 2006: 15).

Briefly, during the ‘discovery’ stage in the early nineteenth century the early writings of India were seen as an exotic echo from the past. The religion and philosophy of India excited colonial administrators who stumbled upon these ancient writings, and likened this to a Renaissance of the East. Today academics view much of this research as romanticised and tinged with Orientalist fervour. However, it has its place in my research as it sets the stage for the reactionary beliefs of the nationalist and Orientalist critique that resultantly evolved and remain widely prevalent to date. Specifically what I am arguing is that *Brahma c* discourse is the source of notions of the “good” acknowledged in dowry. What is evident is that there are other discourses (in tradition) that parallel it, to begin with in terms of bride-price giving customs, which become incorporated into the wider view of Sanskritised Hinduism (Glenn, 2004: 289). It is therefore my argument that *Brahma c* ideals have infected everyone else, not that there is a genuinely shared commitment to dowry as honourable/auspicious/moral that transcends *Brahma ic* prescriptions.

Orientalism is important to my thesis because it positions this debate within the ongoing academic and historical dialectic. Radical denunciations of the very concept of Hinduism are associated with the critique of Orientalism and academic discourses of domination. This critique and associate deconstruction tries to expose links between the intellectual exploration and the political and material subjugation of India individually as a nation, and as part of the wider super-structure of the Orient. It further attempts to disentangle and eliminate western constructs and superimpositions, and to provide a comprehensive revision of the conceptual machinery of Oriental and Indian academia.

Edward Said is particularly influenced by Michel Foucault –his notions of discourse and power/knowledge –and also by Jacques Derrida and his deconstruction of binary oppositions. For Said, the West sets about *inventing* ‘the Orient’. He therefore argues that prior to it being labelled as such, this labelling process being dignified by the authority of western scholarship, the entity we recognize as the Orient did not in reality exist. For example, the racial science that ‘proved’ that ‘other races’ were different (i.e. inferior) to white western Europeans is a representation that served to define the West as superior, enlightened, civilised among other things, in contrast to the Orient as inferior,

dark and barbarous. And, for Said, the impact of this discourse is to provide an intellectual foundation for material domination: for imperial, even economic exploitation.

Critics state that these Western Orientalist representations objectified and categorised the Orient in accordance with the European agenda of domination. This has weakened the possibility that this region has of a genuine self-understanding and further created a sphere of “otherness”. More specifically Indologists have categorised, redefined and even “invented” much of India’s ancient past (Washbrook, 1988: 83). In a more explicit alliance with the British colonial administration, and in consonance with such measures as the census reports, they created the caste system in its currently accepted sense, and Hinduism as a clearly definable religious category. If there is a connection with pre-modern India, it is through the conceptualisations and theoretical norms of the *Brahmanas*, whose writings and observations provided the source material for the scholars as well as the colonial administrators. Through this “unholy alliance” (Halbfass, 1992: 9) colonialism “elevated *Brahma c* formulations to the level of hegemonic text” (Raheja, 1988: 497-523), while Indological discourse continued to project “the essence of Indian civilization” as opposite to that of the West; that is as “the caste system and the religion that accompanies it, Hinduism” (Inden, 1986: 401-446). In the hands of the colonialists, caste became an administrative tool to “arrange and register” Indian society into a cohesive sum of parts. This further helped to transform *Brahma ca* hypocrisy into social fact. Said’s views on the treatment of the Orient have been critiqued as inadequate for non-Islamic parts of the world where a tussle between coloniser and colonised is at play. Since the contemporary context defines the conception of dowry practices with relation to the legal framework, it is crucial to outline the Oriental school of thought that developed in the late nineteenth and early twentieth century and influenced law making in colonial India.⁵¹

Max Müller (2002: 81-82) was possibly the first to reprimand students of anthropology hesitant to explore the relevance of early Vedic material, which he considered a “miracle”. This initial hesitation was compounded by the work of James Mill (1818)⁵² and his thesis that this material was not worthy of anthropological attention,

⁵¹ This aspect of lawmaking in the colonial period is discussed in detail in chapter 3 below.

⁵² See particularly James Mill, (1858: 141) on the mental habits of the Hindus, also quoted at length in Inden (2006: 24) discussing the Orientalist constructions of India.

which set the tone for future researchers.⁵³ For centrist or left-leaning research scholars or intellectuals looking at this material it is clearly romanticised and out-dated, the only relevance of the past of traditional or medieval India is that it was feudal, even nasty and therefore irrational.⁵⁴ The leftist dismissal of such a ‘reactionary’ cultural past has virtually handed the reins of this area to the Hindu Right. This was until Menski (2003) appeared.⁵⁵

It is essential to briefly highlight the research of previous scholars, not only to learn from them but also to avoid some of the methodological problems associated with reconstructing customs relating to the position of women within ancient and medieval Indian history. Juxtaposing my contribution to these past efforts poses an opportunity to clarify my own methodological perspective further.⁵⁶ By focussing on the British colonial perspective, formulated primarily by William Jones and H.T. Colebrooke, both legal practitioners,⁵⁷ it is possible to demonstrate how this colonial administrative context shaped the consequent Indian nationalist scholarship on women in ancient India.⁵⁸ Equally essential is an analysis of A. S. Altekar’s work, as it continues to exert much influence on most post-Independence scholarship, which itself remains ensconced in the archaic nationalist academic paradigm.

An important ideological tool used to rationalise the continuation of British rule and to highlight the superiority of the rulers, were the “twin evils” of the caste system and the oppression of India’s women (Chakravarti, 1990: 32-4). This became the underlying colonial critique of the degenerate social customs of the colonised people. This view is

⁵³ Max Müller (2002: 32-35) records his disdain for such scholars, particularly Mill (1818) based on his *History of British India*, who were unwilling to be open to the nature of Hinduism, and classified Hindus, “a *Brahmana* is an ant’s nest of lies and impostures”. Mill also charges Hindus as highly litigious, cited by Max Muller (2002: 33). James Mill is to be distinguished from his father John Stuart Mill.

⁵⁴ The repercussions of such attitudes is plainly evident in India today, as Ali (2006: 8-9) also points out, where this has allowed the dominant public discourse to be captured by the Hindu Right; with particular reference to the importance of public processions or *rathayatras* as an example of hijacking political history.

⁵⁵ See “In defence of Hindu law” the review of this book for further detail on its relevance to a new reading of a pluralistic Indian cultural context in terms of Hindu law past and present, (Pratap Bhanu Mehta, *The Hindu* 2003).

⁵⁶ Keeping in mind Dumont’s caution that “writers too often do not take the trouble to relate their work to that of their predecessors or contemporaries, disregard precise description, underestimate the difficulties inherent in the definition of the subject, and finally push on to their conclusions, all this as if the work could stand by itself while, in such conditions it can be but ephemeral.” (1961: 75-76)

⁵⁷ See Colebrook (1805) for an enlightening view of Vedic studies in this first phase of discovery.

⁵⁸ See in detail John Keay’s (1981) *India Discovered* and the influence personalities like Jones and Twining had in formulating perceptions of the Raj and its Vedic past. See also, Mukherjee’s excellent account of ‘ones’ part in setting up the Asiatic Society and further elaborations on British attitudes to India in the eighteenth century (1968: 80-90).

echoed in many Utilitarian and Evangelical writings.⁵⁹ Several early writers on India believed Hinduism to, in effect, sanction these evil practices. For instance, John Stuart Mill held that the most telling index of the level of civilisation reached by any society was the position it accorded its women; the Hindus had never treated their women well (Tharu, 1990: 46).⁶⁰ As Indian women were seen to be oppressed and fettered, by implication Indian culture was deemed illogical and sexually perverse, requiring the civilising intervention of the British continually. Chatterjee writes that the “colonial mind” had transformed the Indian woman into a symbol of the oppressive nature of Indian culture as a whole (1989, 622-3). It is particularly noteworthy that in this context the colonial critique extended to the political condition of the colony, which was characterised as anarchical prior to British rule. In fact the British colonial administration was deemed necessary to institute “good government”. Clearly the preoccupation of the colonial discourse was the “civilising” of the Indian people. This created significant repercussions, which are examined here.⁶¹ As Chakravarti (1990: 34) explains, the superior “morality” of the colonisers was effectively established by highlighting the low status of women within the subject population: “the women’s question thus became a crucial tool in colonial ideology”. Repercussions of this ideology continued to be at play in following years, with an enormous pressure to identify and tackle the status of women with the foundation of the nation.⁶²

To counter this critique of Hindu tradition nationalists sought to prove that women, specifically in Vedic India, had been accorded a high position. The dominant trend among nationalist writers was to glorify the past position of Indian women. However, during the late nineteenth and early twentieth century’s women writers developed a critique of the traditional, *Brahma* i cal cultural practices, in particular those relating to widowhood. These writers sought to clarify that the “golden age” might not have been so golden after all.⁶³ However, the colonial critique continued and in order to emphasise the validity of the “golden age”, further evidence was cited: absence of child marriage, access to public spaces, women’s right to education and *upanayana*, the right to

⁵⁹ See Stokes (1959: 2-47) for a description of a battle between the two philosophies; Eastern and Western.

⁶⁰ For an exploration of Mill’s brand of evolutionism see Burrow, (1970: 27-29, 42-49).

⁶¹ For a fuller analysis of the “dead legislative of British India” see Stokes (1959: 243-287).

⁶² The framing of the Dowry Prohibition Act (1961) and the build up to it are reflections of this preoccupation, a virtual hangover of the colonial past. See Nehru’s concerns in chapter 1, above.

⁶³ See in particular Pandita Ramabai’s *The High-caste Hindu woman* (1888), Tarabai Shinde’s *Stri Purusa Tulana* (1882). For further detail see O’Hanlon (1994) on Tarabai Shinde; Chakravarti (1998); and Ramabai (1984) [1888].

participate in sacrifices, including Sutte and Purdah. These were of course the counterpoints to each of the evils the British administration of the day had identified. The nationalists argued that this high status had suffered a gradual decline, caused not by the inherent nature of Hinduism itself but by external factors or 'the other'. This 'other' was highlighted as the corrupting force of the emerging heterodox sects of Buddhism and Jainism, which brought in the general influence of ascetism, and more commonly the Muslim invasions of the eleventh century. Therefore the nationalists succeeded in identifying Vedic India as the golden historical period for Indian women. Particularly noteworthy is the fact that the patriarchal subordination of women, as defined by the feminist movement, was not considered important, rather it was the position of tradition in Indian history that was paramount. As Lata Mani perceptively points out, the extraordinary attention lavished to the women's question from the nineteenth century was clearly indicative of the debate over Indian tradition: "...tradition was thus not the ground on which the status of women was being contested. Rather the reverse was true... what was at stake was not women but tradition." ⁶⁴

Before it became an established academic tradition, several factors influenced the nationalist discourse on women.

First, the glorification of the cultural achievements of ancient India, following the Orientalist re-discovery of India's past, was reinforced by the indigenous retrieval and study of early Sanskrit texts. This repeated re-statement of the cultural glory of ancient Hindu India roused the growing historical consciousness of the emergent indigenous literati providing them with knowledge of, and pride in, the past. Colonial administrators were responsible for introducing certain widely prevalent trends:

a) Discounting the prescriptive nature of the Sanskrit texts, and accepting them instead as reflective of social reality,

b) It was believed that the older the text the greater its authenticity regarding women and;

c) Being confused by any contradictions on the same subject within the texts.

These trends became permanent legacies for future historians (Chakravarti, 1990: 30-31).

Second, Max Müller popularised the theory that Indo-European languages had a common origin, and he was therefore responsible for imbuing the term 'Aryan' with new

⁶⁴ As cited in Nair (1994: 86).

meaning. His research indicated that Europeans and Indians, coloniser and colonised, were of similar racial origin. This strengthened cultural nationalism and Vedic India was equated with Aryan India.

As Chakravarti (1990: 42) points out: “Max Müller vastly popularized a racist Aryan version of the Orientalist Hindu golden age and it was this that became so influential in later Hindu thought”. In the hands of the nationalists, the intellectual and moral superiority conferred on the Aryans by Max Müller were transferred to Aryan womanhood. Once the mainstay of Aryan civilisation had been established as the Aryan man, “...his newly minted, archaic, upper caste image that the entire scope of Indian history and culture was reconstructed. Indian history became the history of the Aryan man...[and the] Aryan woman, a perfect adjunct to the Aryan man, shadow of that shadow character, haunted almost all writings on women in pre-colonial India which had in effect become Vedic India” (Tharu, 1990: 51).⁶⁵

Third and finally, the emergence of social reform movements with Rammohun Roy in the nineteenth century, their subsequent ‘Hindu revivalist’ element, as well as the gradual communalisation of Indian politics played a crucial role in the development of an exclusive Hindu identity. This increasing identification of Hindu with Aryan resulted in the creation of a ‘Hindu Aryan’ national identity. Therefore ancient India became synonymous with Hindu/Vedic/Aryan India and the main category in the nationalist discourse on women became the high-caste Hindu Aryan woman of Vedic India. Continuing this trend in India today the preoccupation with the high-caste woman as the ideal for all womankind is equated with her role in perpetuating the traditional *Brahma* i cal patriarchy.

Indian scholars adopted the nationalist rhetoric of a “golden age” as a historical paradigm to study the status of women in ancient India. The most representative work of this school is Altekar’s *The Position of Women in Hindu Civilisation from Prehistoric Times to the Present Day* (1938). Altekar underlined the golden age rhetoric as an academic paradigm, thereby providing an authoritative validation of nationalist convictions. The conclusion to his detailed survey is telling: “The position that Hindu women occupied at the dawn of civilization during the Vedic age is much better than what we would ordinarily expect it to have been” (1938: 407). There was a considerable

⁶⁵ See also Chakravarti (1990: 46). Interestingly the first traces of this glorification of the Aryan Hindu woman are to be found in the works of early women scholars like Clarisse Bader (1863).

decline in women's status during the age of the *sūras*, and *s* *s*. This decline from what Altekar believes to have been a satisfactory status in the Vedic age, continued till 1800 CE, notwithstanding minor improvements in property rights. This work appears methodologically lacking in the context of today's post-feminist and post-nationalist climate. Altekar's recommendation for the emancipation of modern Indian women is not only limited but patronising. In particular his uncritical acceptance of the written word as 'truth' is problematic and underlines his positivist inclinations, which reveals further methodological lacunae. His explanation for the deterioration of the status of women lacks a wider contextual underpinning, since he makes no reference to the broader economic and social context. Finally, he appears unaware of the intricate functioning of patriarchy, patriarchal institutions and gender relations.

In the context of the Indian academic world striving to remain secular in the face of 'Hindu revivalist' forces, Altekar's statements on medieval India and the effects of Muslim rule on Hindu women are severely problematic particularly in the current contemporary context.⁶⁶ The need to respond to the colonial critique of Indian culture and society meant that historians like Altekar tended to focus on specific religious, social and legal issues that were important in the context of the colonial discourse. Accordingly, Altekar remains preoccupied with the absence or presence of certain factors in the past: dowry, Suttee, child marriage (Menski, 2003: 322), education, Purdah, property rights, *niyoga*, tonsure, religious rights, access to public areas and female infanticide. These issues were taken up for debate and considered indices to the status of women in ancient India. Altekar painstakingly researches the origin and development of each of these indices. Chakravarti and Roy (1988a: 3) criticise as unhistorical such attempts to trace the development of individual traits over time detached from their wider social and cultural context. In his defence however, considering that Altekar was himself a high-caste man and a product of a male-dominated academic world untouched by notions of feminism, particularly at a time when colonialism was losing ground and nationalism was at its peak, it is not surprising that he held the views he did. It is apparent that Altekar was

⁶⁶ Today we have a new area of conflict perhaps due to these early reactionary writings, Menski (2002: 112) points out any attempt to explain Hinduism, to Indians or outsiders, from within is "stereotyped as Hindu revivalist" particularly in the wake of *Hindutva* fanaticism and its BJP era.

deeply influenced by biological determinism and thus accepted women as the weaker sex. He therefore unquestioningly accepts patriarchal paradigms.⁶⁷

Altekar's bias towards certain sources may be held responsible for his methodological shortfall. The bulk of his evidence is drawn from Vedic literature, the *dharmaśāstras*, the epics and classical Sanskrit literature. Of course the use of these texts is inevitable considering the subject matter and the scarcity of alternate sources for ancient India. However, the nature of these texts dictates that the relationship between the normative and the historical be thoroughly examined before they are unquestioningly accepted. Unfortunately, Altekar does not consider the primarily scriptural, prescriptive and normative nature of these texts. Perrot (1992: 4) explains, for instance, that through history women have been the targets of exhortations and normative sermons by religious leaders, who, by emphasising what women ought to be, have helped to obscure what their position might really have been. For Altekar the Hindu woman is the high-caste high class one, although he does mention in passing the "lower sections of society", but it is to castigate them for the perpetuation of certain evils and thereby to hold them to account for lowering the status of women overall. Interestingly, Altekar sets himself the task of writing the history of all Hindu women, however partly perhaps due to his personal background as a high-caste man steeped in Sanskrit traditions, and partly due to the social context of the Hindu reform movement and struggle against colonialism, he represents instead the high-caste high class Hindu woman. For example he talks about the fact that the practice of bride-price prevailed in the lower sections of society and that it was a by-product of the lowering of the age of marriage (1938: 49). Altekar also justifies the existence of the dowry system as it is connected to the conception of marriage as a gift. He says, "A religious gift in kind is usually accompanied by a formal gift in cash or gold. So the gift of the bride also was accompanied by a formal and small gift in cash or ornaments" (1995: 71). While prominent historians continue to validate this view, this reading has severely damaged any attempt to re-examine their role and validity meaningfully. My study evaluates this historical quagmire in the sections below, since this will highlight the problems of understanding the true, but still contested, nature of these ancient writings.

⁶⁷ For more detailed references to Altekar's patriarchal bias see 1938 (112, 322-3, 409).

2.2 The role of tradition in shaping text

When determining the role of early Indian literature in shaping tradition, keeping in mind the multi-disciplinary approach of my thesis, the views of numerous scholars, literary historians, legal theorists, and anthropologists is considered. Further, while examining the place of texts and their relevance to this study it is crucial to understand the varying agenda of much of the research conducted on and around Indian traditional texts. My study focuses on the *Brahma ca* Sanskrit texts, regarded as religious texts by early scholars. It is noteworthy that there has been a clear “literary bias within modern Western conceptions of religion” (King, 1999: 62), and this emphasis on written texts has had wide reaching repercussions on approaches to the study of Indian cultural texts by both insiders and outsiders.

The most ancient layers of Sanskrit text are clearly ritually focused, and as such are centred on male concerns, though they address matters of the macrocosmic Order (*rta*), for which the ancient Vedic rituals appear to have been an important support system. Unsurprisingly, thus, most historians argue that almost all religious texts tend to be andocentric and patriarchal.⁶⁸ For instance, Fiorenza (1993: 7, 11) highlights the androcentric nature of the Bible, which she argues has been successfully employed to legitimise societal and ecclesiastical patriarchy and women’s “divinely ordained place” in it. According to this historical view, such texts are male-centred because they are male-authored and operate with a generic masculine reference point implying men are speaking for and about women. Importantly, these texts are characterised as prescriptive and reflective of the world-view of the class that composed them. Similarly, the texts that form the main source material for my study, as noted have a strong male, *Brahma* north Indian bias and appear primarily religious in nature.

⁶⁸ Patriarchy literally implies the rule of the father. In the Indian environment specifically, as in the global context, this refers to a social organisation where men are the heads of their families and descent and inheritance is reckoned through the male line. Feminism, in characterising patriarchy more generically as officially sanctioned male dominance, characterises it symbolically as the root of all evil. According to Lisa Tuttle’s *Encyclopaedia of Feminism* (1986) definition of the term “the universal political structure which privileges men at the expense of women”, which proponents of new masculinity contest? They concur with the feminist view that patriarchy is oppressive, but argue that it does not necessarily imply men are universally privileged. In the Indian context the term patriarchy is impossible to ignore. The discussion in chapter three below will devote some excursus to the relevance and prevalence of patriarchy in Indian society and its role in conceptions of dowry. At present it is sufficient to preface the term in its current cultural and critical usage. Further, see Reiter’s (1975) edited volume in its entirety, and the introduction (Reiter, 1975: 11-19) and Lila Liebowitz’s “Evolution of Sex Differences” (1975: 20-35) in particular, on the application of these ‘gendered’ categories to the modern academic study of women as a sub-species.

Further, I am aware of the dangers of applying the gender lens to ancient Indian literature as Jamison (1996: 5) cautioned.⁶⁹ I have located these texts in their specific socio-political and textual contexts and am aware of their function in society past and present. I do not at any stage claim that the information concerning women relates to social reality; in fact the intention is quite the reverse. The *Brahma ca* discourse within these writings represents an influential construct of the male elite, the *Brahma s*. We do not have women composing teachings or observations during the ancient period or even expressing their views on women's role in society. What we have is the male elite, possibly senior citizens, expressing their view of the world. Clearly, it is not always possible to gather accurate or historically sound data of the lives of women from the texts; however, it is all that remains of a distant period. Nevertheless, they encapsulate the dominant ideology of the period, an analysis of which is necessary if the processes of legitimisation of patriarchal institutions like dowry are to be better understood. We will see from the argument below that these texts are a product of the *Brahma ca* discourse designed to indicate how the world should be, and not what it was.

Over a century ago, when Max Muller edited the fifty-volume set of world scriptures he perhaps did not hesitate to entitle the series "books". The term Bible originally implied books,⁷⁰ while the word 'scripture' designates that which is written down. On closer inspection it is evident that being a sacred text or 'scripture' is not a quality inherent in any given text, rather it is the interactive, inconstant relationship between the text and the community of people to whom it is symbolic. Cantwell-Smith (1993: 18) highlights the human "propensity to scripturalize", which he believes is a widespread tendency in most cultures. Most relevant to the discussion that follows is the assertion that there has been and is a human activity of treating a work or works as scripture, common to most societies. It is a surprising thing to do, according to Cantwell-Smith (1993: 19), to take a piece of literature and evidently elevate it to very special status. And to further live one's life, individual and corporate, in accordance with its guidance.

⁶⁹ For further detail for Jamison's caution and a discussion on the textual material under survey here see the introduction to chapter 5, below.

⁷⁰ During the middle ages there was a gradual movement from *ta Biblia*, a plural in Greek towards *Biblia* a singular in Latin. Therefore perception moved from "the Books" to "The Book". This extended from the purely grammatical sense to the gentle development away from a "collection of writings" to a single volume bound between two covers. This was strengthened further by progress in printing following the Gutenberg era. See Cantwell-Smith (1993: 10-13). Similar positivist perceptions have developed from previously transcendent meanings in relation to the material under consideration here as discussed below.

The word Qur'an, on the other hand clearly implies what is recited, not written, and of course the dogma in this case is that a Muslim has to believe that the Qur'an is god's word. The trouble is, of course, that God did not give detailed enough instructions for humans to lead their everyday life –humans still have to make their own decisions seeking to be compliant with God's wishes. No such pressures exist for Hindus, but that is often forgotten in the so-called comparative debates about 'religious law'. Whether to give dowry or not could for Hindus never be a matter of falling in line with divine will, it is a social issue.

There is thus at least a dual involvement evident in all early collections of religious thought. The approach that regards the written word above the spoken word is the positivist Western influenced approach, reinforced by Islamic concepts, it would appear. Similarly, what the term Veda implies is a complex web, and what precisely the Veda comprises is tangled in this web.⁷¹ This web has further to do with humans being part of the cosmic web, but the day-to-day actions for common people are not prescribed in detail by such texts. However, this may be a different matter for ritual specialists engaged in Vedic rituals. Here, absolute precision and total compliance seems to be expected, every single word, every syllable of the text, counts and has a role. The fact that only a small minority of Indians ever had an opportunity to study or use the Veda is a crucial fact not to be ignored here. It is necessary to highlight the prominence of these texts here to foreground the argument because of the status given to this collection by outsiders, and insiders alike. Although the Veda is rarely consulted, it is called supreme. The observation that "Veda is whatever pertains to religion; Veda is not books" may be seen as the guiding principle for much of the early scholarly writing on these collections.⁷²

⁷¹ Whilst regarding even the early texts an outside observer might deduce that there are sixteen, considering that there are traditionally four classes of text for each of the four orders of the Veda Rg, Yajur, Sama, Atharva: *a h ā, Brahmanaa*, Aranyaka and Upanishad. As Cantwell-Smith (1993: 133-34) highlights, when the term Veda is spoken by modern Westerners, there is a tendency for its meaning to fluctuate between one, or three, or four, or all sixteen elements of this formal collection. Interestingly the four distinct threads of thought represented by four separate collections are now often, even among academics, referred to as the Veda, as singular, no longer plural. Similarly the Bible, in the Latin is so called as one book, not many books so, *Ta Biblia*. This nomenclature in some way signifies a sense of single authorship, a sense of monotheistic imposition of rules, casually cutting out the options and the realities of plurality.

⁷² *Vedam est, quidquid ad religionem pertinet, Vedam non sunt libri* this quote is from the response made by a *Brahmana* and reported by a Carmelite missionary Paulinus recording his experience of studying with *Brahmanas* in 1792 (Cited in Cantwell-Smith, 1993: 305).

Following from this observation one can examine the position that has argued that the philosophy and ideology contained in the four Vedas represents religion rather than tradition. It is useful to digress here to compare and discuss the terms ‘*religio*’ and ‘*traditio*’ (King, 1999: 35-40). King (1999: 35) points out that the term religion derives from the Latin ‘*religio*’, which has been related to the root *re-ligare* meaning to re-trace or re-read. It follows therefore that *religio* involves the retracing of “the lore of the ritual” of one’s ancestors. This implication of the term appears to have gained credence in the “pagan” Roman Empire and rendered *religio* synonymous with *traditio*. King (1999: 36) argues that as such *religio* represented the “teachings” of one’s ancestors and was essentially not open to debate. This attempt to elevate ritual to a sanctified status is evidenced in the post-Vedic period by the *Brahma*ical discourse, as explained below. Primarily *religio* involved the performance of ancient ritual practices and paying homage to the gods. However, this also implies an inherent plurality, pertinent particularly in the Indian context, that there can never be one *religio* because there are a vast variety of different social and ethnic groups with traditions and histories of their own. As Balagangadhara (1994: 241) notes:

When you look at religion as *traditio*, that is, as a set of practices transmitted over generations, then the term appears as a minor variation of our intuitive notion of culture: to have religion is to have culture.

Modern discussions on the meaning of the term *religio* tend to focus on the Christianised model of religion, strongly emphasising theistic belief.⁷³ Interestingly, however, there is an implicit pluralism evident in the Ciceronian understanding of both terms *religio* and *traditio* (King, 1999: 37).⁷⁴

Before proceeding to examine the relevance of the traditional texts and their practice it is useful to briefly discuss the classification best suited for the complete content of the early Indian literature. It has been variously called early Vedic religion or Vedism. Ray (1999: 43) argues that *Vedism* underwent fundamental changes and virtually “re-invented” itself as *Brahma*ism during the period 500BCE to 300BCE. Ray’s assertion is adequately attested in post-Vedic literature; however before we go further, the term *Brahma*ism requires explanation; since this study is concerned with the nature of the religion implied by it. Describing the historical setting of the ancient period of the

⁷³ Whether, mono-, poly-, or pan-theistic in nature, these represent theistic traditions all the same (King, 1999: 37).

⁷⁴ See King (1999: 35-36) for greater detail of Cicero’s pre-Christian etymology of the term ‘*religio*’ which allows the connection to *re-ligare*, meaning to bind together or to link, to be constructed.

traditional texts aids a contextualised view of these religious texts and the version of religion they carry. I agree with Richard King (1995: 1) when he observes that there is a close connection between religion, culture and power. He highlights the layering of these categories, "...awareness of the mutual imbrication of religion, culture and power as categories. This is not to say religion, and culture can be reduced to a set of power relations but rather that *religion and culture are the field in which power relations operate*" [emphasis added].

In terms of sociological theory this thesis touches upon several. First and most importantly Emile Durkheim's (1979: 39) *sui generis* approach to religion, and further his notion of the 'collective conscience' of a society as the totality of the beliefs and sentiments common to the average members of that society, which forms a determinate system, almost with a life of its own (Fields, 1995: 5)⁷⁵. This corresponds almost entirely with the ancient Hindu category of *sadācāra*. Levi-Strauss's approach to the fraught nature of gift-giving in pre-literate societies is also considered here. Bronislaw Malinowski's participant-observer methodology must be noted as a mode of understanding my own culture, from the anthropologist's desk. However, previous research centred on the history of religion has risked the danger of taking the *sui generis* "in and of itself" approach to an extreme.⁷⁶

It is essential to note that the central explanatory category of religious studies, meaning the notion of "religion" itself, is a Christian theological category (King, 1999: 40), how easily this has sat with previous and current research on Indian religion in particular is discussed here. The concept of 'religion' is the product of the culturally specific discursive processes of Christian history in the West and has been "forged in the crucible of inter-religious conflict and interaction" (King, 1999: 40). As Shaw (1995: 65-76) argues, like Eliade (1982), most studies on the history of religion examine and project a view from above, thereby rendering them socially de-contextualised and un-gendered. Fiorenza (1993: 29) makes a similar statement when she argues that it is not possible to take androcentric texts, like the Bible, as reliable sources for human religion, history and culture:

⁷⁵ Durkheim's first edition of *The Elementary Forms of Religious Life* (Paris: Alcan) appeared in 1912 and is notably a seminal work on sociologically informed philosophy of society. See Karen Fields's (1995) entire Introduction for a qualitative analysis of Durkheim's position in sociological thought.

⁷⁶ See in particular McCutcheon's *Manufacturing Religion* (1997) based on his doctoral thesis of 1995, examining the discourse on *sui generis* religion and the politics of nostalgia.

“The text *may* be the message, but the message *is not* coterminous with human reality and history. A feminist critical hermeneutics must therefore, move from androcentric texts to their social historical contexts. It not only has to claim the contemporary community of women struggling for liberation as its locus of revelation, it also must claim its fore-sisters as victims *and* subjects participating in patriarchal culture.”⁷⁷

Any approach that allows religious texts and religion to be treated as an irreducible phenomenon leads quite simply to the representation of religion as scriptural, thereby limiting any anthropological analysis. Subsequently both religions with religious texts and some sort of scholarly elite who claim interpretative authority are privileged. Shaw (1995: 65-76) concludes that this approach is underwritten with inadequacy, since it fails to examine the concept of power in the context of the nature of religion. Any analysis on the nature of religion, its origins and the context of religious texts allows these texts to be demythologised. In the process the androcentric nature of the texts as codes of patriarchy and patriarchal power, its ideology and the underwritten sanctions are challenged and therefore revealed.

The precise theoretical framework guiding the present thesis involves an approach pioneered by Clifford Geertz (1973), the concept of “thick descriptions” as a way of cultural description, to generate interpretive insights into the practice of dowry. In *The Interpretation of Cultures*, Geertz espoused the idea that culture is a semiotic concept and equated ethnography with interpretation, or the reading of text. He explained that the purpose of cultural analysis should “not be an experimental science in search of law but an interpretative one in search of meaning” (1973: 5). Recalling the researcher-ethnographer, he accorded greater importance to interpretative insights, thickly described, than to ‘thin’ scientific conclusions, as the product of ethnographic endeavour. I stress his emphasis on being aware of the critical elements of cultural specificity in attempting to draw generalisations about how dowry as a custom functions.

James Clifford (1986) contributed to the conceptual development of hermeneutics. Famously referring to cultural descriptions as “partial truths”, he develops Geertz’s notion of ‘thin’ with this assertion that “[e]ven the best ethnographic writing is fictional or constructed in the sense that cultural and historical ‘truths’ are partial” (Clifford, 1986: 6). Accepting this hermeneutic insight that cultural descriptions may be likened to *stories* (implying autobiographical or fictive content? to a degree), this further

⁷⁷ Emphasis in the original.

implies that ethnographic accounts do not reflect a pre-existing reality, much less one that is uniformly or universally shared. Texts do not mimic reality. Instead, they constitute reality anew. This reading may be applied to the role of texts across the historical period under survey here, and additionally augment and embellish the researcher's position in the process. This becomes relevant in examining my own position as a researcher involved in the study of my own culture, including the fact that I am a woman researching an issue that affects Indian women.

However politically incorrect or sexist it may seem today, in the late 1980s eminent Indian social theorist Srinivas (1984:7-8) highlighted the advantages of dowry being analysed by women social scientists, since the segregation of sexes continues to be a marked feature of Indian society, particularly its more traditional sections. His assertion is that "women social scientists might have better insight into the kind of mental world in which the daughter-in-law or mother-in-law lives...". Relevant in particular are Srinivas' observations on the social scientist's dilemma while addressing dowry in particular:

"Dowry is in many ways an archetypal institution, for it illustrates the kind of problems which the social anthropologist/sociologist studying his own society faces frequently...The first and most obvious problem is the ambivalence which dowry rouses in the sociologist studying it. On the one hand, there is the feeling that the institution is an unmitigated evil and that it needs to be destroyed root and branch, and at the earliest opportunity, and on the other hand, the institution demands to be understood, its many ramification [Sic.] traced, and its regional, caste and other variations recorded. The sociologist studying dowry cannot help being fascinated by it, and being impressed with its strength and resilience. But this very fascination with the institution and his awareness of its strength might result in his being accused of being a reactionary who wants the institution to remain." (Srinivas, 1984: 7)

Noting these worthy pointers as ear-marks in my research notes I now delve further into how these theoretical issues are to be addressed in the course of this thesis, by outlining the lay out of this work. Notably, this thesis considers Mauss's (1925) original insight on the socially sanctioned distribution of gifts and other tokens of relationship, fraught with historical and structural significance as these things are, may be an irreducible element in human culture. The pot-latch and caste system are perhaps instances of general principle, which underlie behaviour sanctioned and governed by these albeit fluid rules. The universal relevance of these systems is clearly defined in this

thesis in chapter 5. I argue here that the dowry system coincides with the pot-latch system of gift-giving in several ways.

Within the wider context of Indian marriage laws, the thesis accounts for the phantom of dowry, which neither has a clear-cut definition, nor an ontology within textual representations, yet has remained a powerful player in the discourse of marriage laws (see for detailed discussion chapter 4). While engaging in a discourse of what dowry is and how it has formulated itself to become an entrenched partner to most Hindu, even Indian marriages, the thesis explores particularly the role of tradition and text as agents in shaping the notion of dowry, and its indisputable position in Indian society today as an uncomfortable *sadācāra*. The canvas against which this custom is set illustrates the rather important role ‘tradition’ continues to play in shaping India’s legal modernity, which apparently is not just dominated, as we assume for ‘Western’ legal systems, by state-centric and top-down formally led legal regulation.

It is usual to employ the term Hinduism when dealing with these ‘texts’ and the religion or beliefs they embody. However, Hinduism as a term is rife with academic controversy. It has been categorically called a “western concept” attempting to indicate a cognizable entity (Cantwell-Smith, 1993: 137). For the ancient period in question it appears archaic; particularly since its early connotation, devised by the British administration, was a geographical-cum-cultural one. Von Stietencron’s (1989: 11-27) statement that Hinduism is just a “collective label” or *Sammelbezeichnung* is noteworthy. He argues that it is a construct produced by Western scholars of religion in order to have a common designation for the “innumerable, partly cognate, partly divergent religious phenomena of one geographical and historical region” (Von Stietencron, 1989: 12-13). Hinduism is therefore a term used to describe a collection of belief systems by outsiders, which insiders have adopted for reasons of brevity. This view is echoed by several scholars who argue without consensus that Hinduism represents an amalgamation of sects.

From the insider perspective it is argued that Hinduism should not be compared to religions like Islam and Christianity, because it represents rather a kind of “meta-religion”. This view argues that the sects or sectarian religions like Saivism and Vaisnavism which operate within Hinduism might be suitable for such comparison instead. Various Indian authors have rejected the characterisation of Hinduism as a

religion at all and have critiqued the very concept.⁷⁸ Others have put forward what appears to be a more characteristic approach that is to define its “essence”: not in terms of specific religion, but a more comprehensive and inclusive constellation of religious thought and life and as a potentially universal framework for religious plurality.⁷⁹ As Cantwell Smith (1962: 65) summarised “there are Hindus, but no Hinduism”. In his view it is a foreign, possibly Islamic and European superimposition upon the “luxuriant welter” of a tradition that “is not a unity and does not aspire to be” and a misplaced attempt to systematise and “congeal the spontaneous” (1962: 66).⁸⁰

It is broadly agreed among the scholarly community of Indologists that there is no “one” Hinduism (Menski, 2002: 112). Further it is crucial to recognise that this tendency of early western scholars to homogenise has obscured the very substantial diversities in religious outlook in India during successive millennia and even centuries. Cantwell Smith (1993: 137) recognises as “characteristic” of Indian culture the ability to not repudiate earlier phases but to continually innovate and enrich its heritage rendering it more complex throughout history. By history I mean an ongoing process, not just the past. It is a growth process, then, a continuum, which is ongoing. The present is just as historical as the past, as is the future. They are interconnected. Human history is a continuing dialectic, being re-modelled and recast by new contributors to its richness and complexity. Bearing this in mind it is possible to continue the outlined discussion here.

For the present purpose the broad definition of Hinduism as a conglomerate of belief systems with two primary features in common for most Hindus should suffice: the acceptance of the Vedas and the importance assigned to the caste or *varna* system. Beyond that, there ought to be at least a general cultural recognition of being interlinked with the cosmos, and thus with all others, in a culture-specific way. Thus put, Hinduism turns out to be a chthonic religion (Glenn, 2000, 56-85) and is quite akin to African

⁷⁸ Halbfass's (1988) *India and Europe*, chapter 18 in particular, has an enlightened discussion on Bankim Chandra and S.V. Ketkar. Also see L. S. Joshi *A Critique of Hinduism*, translated from the Marathi original 1940 edition by G. D. Parikh 1948 Bombay.

⁷⁹ See S. Radhakrishnan *The Hindu View of Life* 1968 London (first edition 1927). In Hacker's (Halbfass, 1995) view questions concerning the “essence” are more representative of Neo-Hinduism, a preoccupation with an idea of unity and essence is motivated by and in effect inseparable from the modern Indian quest for a national identity. Also for further detail on Hacker's thesis on Neo-Hinduism, and its place in the study of religions see Smith (1998, 313- 339), and for an able deconstruction of versions of Hinduism.

⁸⁰ Cantwell Smith rejects any attempt to “reify” or “essentialize” the personal faiths of human beings. Apart from this specific critique of the concept of Hinduism he categorically considers the very notion of “religions” and “religion” as inadequate. See also R.D. Baird (1971).

religions and other Asian forms of “chthonic culture”.⁸¹ But Hindus are proud about having an ancient literature and think they are thus very different from these other, virtually ‘primitive’ religions without proper texts. We see here that ‘text’ also has an important function as an ethnic identifier, maybe even if one is illiterate. After all, the ancient Indian texts started out as oral texts!

Returning to the explanation about *Brahma s* : although pivotal to an understanding of *Brahma s* , in isolation the categories of *varna* and an acceptance of the Vedas as central, does not comprehensively represent what this term *rah a s* expresses in totality (Smith, 1994: 5-19). Academics, like Robinson (1985: 182), have further attempted to differentiate the *Brahma c* and non-*Brahma c* strains within Hinduism by identifying the former as a Sanskrit-based, priestly tradition emphasising ritual and the latter being expressed through regional languages concentrating on devotional worship without any defined role for a priestly class. Lipner’s (1994:9) definition of *Brahma i c* culture marginally suits the discussion here; *rah a s* is a collection of beliefs and practices that are not homogenous, but propagated and ratified by *Brahma* authority. This proves true in two aspects. *rah a s* created, implied and accepted the supreme authority of the *Brahma ar a* and was assimilative in nature. It was *rah a s* in fact that paved the way for further assimilation under *r ā c* Hinduism. The verses, conglomerates of older ideas about marriage and dowry contained in the ‘texts’, are products of this historic period. Therefore, to adequately examine the sources of evidence laid out in the following chapters, *rah a s* requires a far more comprehensive definition.

Here I am concerned with the glorified status the *Brahma s* as custodians and traditional interpreters of the Vedas gained and their role in elevating these ritual manuals to prescriptive teachings. Crucially the *Brahma s* claimed to be and were recognized as religious authorities because of an intimate relationship to the Vedas; the authoritative and in that sense canonical texts of Hinduism. The authority of the *Brahma* was dependent on the Veda and the Veda existed only because of the traditional function the *Brahma* assumed for its preservation. However, *Brahma s* cannot be defined as

⁸¹ The term “chthonic” here refers to primarily oral traditions, including those found in parts of Latin America and the South Pacific also believed to have common elements, see Glenn (2004: 32) for further detail. In this, Glenn’s second edition to his original (2000), apart from the title losing the phrase “a sustainable diversity”, he further develops his theory of tradition. Some reviewers have called Glenn an unlikely “Oppenheim”, see Peter Norman’s review at www.globallawbooks.org/reviews/File.asp?id=246

merely a “Sanskrit-based priestly tradition emphasising formal ritual” (Smith, 1987a: 39), because although it emphasised the role of the priests as the traditional interpreters, purveyors, bearers and protectors of texts and traditions *Brahma s* also developed simple forms of domestic ritual rites. In other words, *Brahma i sm* also comprised ‘living laws’ and internally plural awareness of *sadācāra*, it was from early on a plurality of pluralities (Menski, 2010)⁸².

Selvanayagam (1992: 65) observes that it was as a result of the decline of grand rituals following the rise of the heterodox sects that the *Brahma s* were forced to develop simpler forms of domestic rituals. *Brahma i sm* undoubtedly privileged grandiose formal ritual. But Vedic sacrifices continued to be central and were revived during the medieval Sunga period.⁸³ Essentially, *Brahma s* represented an integrated socio-political-religious ideology which developed in this period pressured by the social and political transformations which transpired. Contained in this ideology was the worldview of the elite *Brahma s*, which found expression in their vast literature. These texts reflected the changing circumstances of the times as perceived by the *Brahma s*. The basic tenets of this tradition were: the belief in and the propagation of the four-tiered caste/ *varṇa* system with the *Brahma s* at the top; complete acceptance of the notional authority of the Vedas; the belief in *dharma* cosmic, social, moral and political order and connectedness;⁸⁴ hence the performance of formal ritual and also of domestic rites, which over time became more central to ‘living’ Hinduism than the Vedic rituals of *Brahma s*; the constant assimilation of new cults and traditions as exemplified in the incorporation of the principles of *samnyasa* and *aśrama*; the belief in ancestor worship and the theory of the three debts, *ṛas*; the establishment of four goals or primary imperatives in a man’s life, *puruṣārthas* and of four modes or stages of living; an emphasis on centralised monarchy as the predominant political system, on territoriality, on patrilineal bonds within the family and society, and on private property.

These tenets of *Brahma s* were expressed in what we might call the ‘texts’ of this period. Sanskritists have traditionally held that the Vedas and a large part of the post-Vedic literature including the *śāstras* were orally composed and orally transmitted for a

⁸² See <http://ssrn.com/abstract=1621384>

⁸³ There is documentary evidence, for instance, that Pusyāmītra Sunga performed the *aśvamedha* sacrifice.

⁸⁴ For a detailed analysis of *dharma* as the cosmic scaffolding of Order and harmony see Jeanine Miller (1985), further for a law related understanding of the *dharma-dharma* complex see Menski (2003: 32, 90-91).

considerable period of time before being committed to writing.⁸⁵ The first to mildly refute this hypothesis was Walter Ong (1982: 66), who wrote that there is some degree of difficulty in accepting that works of such length could have been orally composed and retained efficiently in memory. Goody (1987: 110-22) argues a stronger point claiming that this entire corpus could not have been the product of an oral society; purely because of its length, he argues it could not have been transmitted over generations in invariant form and been confined to a so-called oral tradition by a class of literate specialists. This critique was firmly rejected by Falk (1990),⁸⁶ cited by Lopez (1996: 35-36) and Halverson (1992: 301-317). Staal (1986) had earlier admitted the role of written text at some point in the history of the Indian epics, and clearly rejected the notion that the Vedas originally had written texts.⁸⁷ It is necessary to consider that in the midst of this controversy no final conclusion has been reached, further stressing the amorphous timeframe of undocumented periods of history. It is possible, thus, that these texts contain traditions that have remained fluid for a time, and were eventually written down.⁸⁸ In the course of their composition, compilation and final commitment to writing, these tenets became further clarified, even crystallised and reformulated.

The *śāstras* and epics composed/compiled by the *Brahma s* during this period therefore represent the ‘texts’ of *Brahma s* par excellence. They not only reflect *Brahma* i cal values but serve as receptacles where *Brahma* ca doctrine is recorded and explained. But as doctrine, this is not text as binding authority, but as authoritative guidance, with room for variations in specific circumstances, as the *sū ras*, in particular, richly document by saying that a particular ritual should be done like this, or like that, or in this or that other way. The texts themselves thus tell us that they are conscious of plurality and of ‘living law’ adjustments.

amison (1996: 7) comments that the texts “are entirely religious chronicling an elaborate institutional religion requiring significant material resources and social organization privileged in its socio economic class”. When perceived as expressions of *Brahma* i cal thought, the very nature of these ‘texts’ emphasises the reasons for their being, their composition/compilation and commitment to writing. The major question in

⁸⁵ See Coward (1988: 116-118) on the nature of the oral composition of what he has called Hindu scripture.

⁸⁶ However see also Falk’s (1989) in-depth analysis of language and women’s positionality in religious life elsewhere.

⁸⁷ As cited in Lopez (1996: 36)

⁸⁸ For a discussion on the writing down of the orally transmitted texts see Coward (1988: 120-122).

this thesis is whether and to what extent text can represent *sadācāra*. According to Menski (2005)⁸⁹ it is these old men stating something or writing it, but what are they writing? Are the expressions in the layers of traditional cultural texts, based on their own opinions of the social norms even customs that they continually observe? Or are they ideals that one should observe? In either case, is that not *sadācāra*? When Derrett (1984: 192-193) notes that “as long as the joint-family system survives as a sociological fact (irrespective of what happens to it at law)...” he clearly recognizes the disparity between legality and reality. Texts claim one thing, society quite another.

Further, as Smith (1987a: 46-51) observes, if “by representing new texts and practices as in some way connected to the Vedas, change is both legitimized and denied and continuity is both affirmed and unrestrained”, and this process transforms *sm ti*, technically “non-canonical” into “canonical” and thereby authoritative; undertaken by the *Brahmans* and by implication if the *brah ans* are creating an ideal model for all society, then these patterns of behaviour are gently over a period recommended for all, in a certain way. This explanation fits the remit of the preferred form of marriage being instituted for all, as we will see in chapter 4 and 5 below. However, there is also room for the argument that *Brahma s* would not assume that everyone followed their model, for example the frequently listed eight forms of marriage assume certain ideal forms for *Brahma s*, but other forms for different castes. Again, the existing interpretations of these kinds of texts are not helpful enough to clarify the issue debated here.

According to Vansina (1965: 77-78, 84, and 154), a text or a tradition does not exist by itself or even for itself. Every testimony and tradition has a purpose and fulfils a function. Usually this function is to serve the interests of the society in which it is preserved by being put into practice. He further observes that normally the interests of the society are served in two ways: either tradition helps a society to adapt itself to its changing environment or it helps in permanently maintaining the social structure. Scholars argue severally, offering numerous explanations. However they appear to miss the structural link between texts and the socio-politico-religious tradition that gave birth to them. According to some, the *sū ras* were composed for the guidance of the advanced sections of society in its early stages (Banerji, 1962: 9). Some believe that the *śās ra* literature was developed in order to justify social organisation increasingly threatened by

⁸⁹ Discussion during supervisory meeting.

the growing spread of Buddhist ideology. For instance Derrett (1994: 3) writes: “A stimulus for the *śās ra* seems to have been the need to depict and justify a social organisation as against the seemingly insidious message of Buddhism which... threatened to undermine the tradition and claims of *Brahmanas* to monopolise all contact with the eternal and the intellectual Hindu society.” It was further held that the *śās ras* were intended to encourage Sanskritisation of the indigenous and tribal community without jeopardising the social and political superiority of the upper castes (Srinivas, 1995: 1-8).⁹⁰

Elsewhere Derrett (1975: 10) suggests that the *śās ras* addressed themselves to the intricate task of inspiring the aspiring, without encouraging them to infringe upon the property and prestige of their betters, and reassuring the superiors that they are in no way threatened. In addition to the above stated assertions, it is not far flung to assume that the *Brahma as*’ desire to firstly assimilate, compose and compile the *śās ras* and secondly to take over custody of the epics from the bards was rooted in the peculiar socio-historical context of this period. See Map 3: Socio-cultural Map of North India (c. 500 BCE).⁹¹ This was further strengthened by the *Brahma ca* perception of a threat to their envisioned socio-political order. The primary motivation of this literature was to expand the ritualistic, social and political universe of the *Brahma as* further to encompass all aspects of daily life, so as to counteract the perceived threat posed by the heterodox sects. This is the transition from *ta* to *dharma* (see Menski, 2003: 94ff).

The process of composition/compilation had two important results which reinforced *Brahma s* further. Firstly, immense power accrued to the *Brahma as* through the process of compilation, also reinforcing their privileged ritual, literate status in society. This was first the case for the huge Vedic rituals and after their decline and eventual collapse the sphere of the domestic rituals, a process that is clearly reflected in the late textual layers of the marriage hymn of the *gveda* (RV X.85) and further expanded in the corresponding text of the *Atharvaveda* (AV 14). Not just as authors but also as custodians of *s*, or tradition, they appropriated memory and acquired mastery over knowledge and the production of knowledge. The unpublished detailed research by

⁹⁰ See also Ghurye’s (1969) analysis of “var a dharma” in this regard as explored by Srinivas (1995) to further explain his theory in terms of Indian notions of societal sub-division.

⁹¹ Source: Joseph E. Schwartzberg’s *South Asian Atlas* (1992: 15-21), now also available in a digital version.

Menski (1984: 538-548),⁹² suggests further that these authors manipulated their esoteric knowledge and deliberately concealed certain uncomfortable, i.e. polluting elements of their ritual activity.⁹³ As Smith (1994: 58) succinctly states:

The control of a group's collective memory, the power to declare what happened in the past is a significant means of controlling the here and now. The ability to account for the past also entails the power to put it into the service of the present and into the service of those who pronounce on what happened in the past. Those who cannot remember the past are doomed to repeat others' versions of it.

Secondly, *Brahma s* itself assumed its form during this involved process of composition and compilation. Their worldview and belief system became re-systematised and clarified. It is tempting to conclude that *Brahma s* was created or at least re-created in the texts of the period. In the centuries that followed the composition and compilation, the *śās ras* and the epics were committed into written form. Interestingly, it appears that the act of writing did not substantially alter the discourse or indeed the content of the 'texts'.⁹⁴ Notably however, in ancient India writing did not freeze or fossilise the *śās ras*, whereas according to some, in Mesopotamia the commitment of legal texts to writing soon after writing first appeared apparently froze legal codes (Oppenheim, 1964: 232; Ong, 1982: 41).

It is the position of this thesis that these views appear too positivist. The fluid form of the *śās ras* remained, at least till the end of the nineteenth century, when additions and interpolations continued as a matter of form.⁹⁵ Writing was thus unable to establish the *Brahma ca* discourse as an autonomous and authoritative discourse. The text was not 'the law', but a *source* of law, and it is significant that Muslim scholarship, for example, says the same even about the Qur'an. This, then, suggests further that existing scholarship on the authority of Sanskrit texts has been too positivistic.

It is believed that the act of writing things down is able to establish what has been termed "context-free language" (Hirsch, 1977: 21-23, 26). Similarly, Olson (1980a)

⁹² Further, Menski (1984: 530-542) suggests a plausible argument for a creation of the priest as ritual scapegoat in the early marriage texts.

⁹³ However, there are sometimes clues to these attempts to hide these acts, an associated example is to be found in AV 14 concerning the disposal of the blood taboo, the soiled bedclothes, even the bridal clothes, see Menski in some detail (1984: 532)

⁹⁴ See Day (1982) below, and his findings on the conservative tone of the ancient writing.

⁹⁵ In a certain sense the *śāstric* tradition continues to be fluid in contemporary India, where conflicting interpretations abound and take the place of the 'written word'.

discusses the creation of an “autonomous discourse” through writing.⁹⁶ Practically speaking this means that a written text is deemed to be more authoritative as it cannot be directly questioned or contested. However, texts in Sanskrit would still be open to interpretation, and thus would not simply be ‘fixed’. Unlike oral speech, a written discourse is detached from the author; therefore a written text assumes greater credibility, but that still does not mean it is set in stone and valid forever and in all scenarios. In ancient India authority was associated with the speaker and the spoken word rather than the written word.⁹⁷ In fact despite the existence of written records, texts continue to be memorised and orally transmitted. Writing however did restrict the access to the corpus of literature limiting its perusal to literate *Brahma as* and *k a r yas*, thereby reinforcing their privileged status. But it could not be held that a text is simply ‘the law’. It is always operative in a context and thus normally has what lawyers would call ‘persuasive authority’ or ‘coercive force’ rather than being a strictly binding rule. The text as a form of law has to live with other types of law and thus contributes to the genesis and constant navigation of ‘living law’, for which ancient Sanskrit devised, inter alia, the term *sadācāra* as a form of *dharma* and thus an aspect of ‘tradition’.

2.3 The impact of texts on traditions

We have seen that Hinduism as a historical entity spans a vast period and draws us back to the beginnings of human thought. Its very nature of projecting past, future and present into a complex continuum, which renews itself periodically, demands that any analysis be situation-specific and time-sensitive and take on board Clifford Geertz’s notion of “thick description”.⁹⁸ “Thick description” refers to a description rich in contextuality, a study which pays attention to sociocultural and historical circumstances which contribute to the significance of the event or period. The second type of “thick description” attempts to clarify precisely the operative factors in the interpreter’s approach, which may directly influence his or her conception of the subject. As King (1999: 80) summarises, from this

⁹⁶ Both also cited in Ong (1982: 78) within a similar context. Also, for an informative discussion on Hirsch’s *The Philosophy of Composition* and the relevance of “context-free” language see Bizzell and Herzberg’s (1980) examination and critique.

⁹⁷ See Chitre’s (1991: viii) introduction to *Says Tuka* describing the conflict faced by Tukaram the *ś dr as* saint because he dared to compose poetry on religious subjects which were considered solely the domain of the *Brahmanaas*. He also makes an interesting point on how *Brahmanaism* as a religion at this time separated communities (Chitre, 1991: xvi).

⁹⁸ The term “thick description” was coined by philosopher Gilbert Ryle but has been elaborated excellently by Geertz (1973). See also King (1999: 77-80).

perspective the most useful hermeneutical works are those which manifest an awareness and appreciation of context of the text and of the interpreter.⁹⁹ With this approach in mind it is possible to name the texts and their interpreters for further analysis.

The texts that characterize themselves as receptacles of *Brahma ca* tradition and thought, wherein *Brahma s* assumed its predominant shape are as follows: the *dhar as ū ras* (specifically Gautama, Vasistha, Apasthamba and Baudhayana), the *dhar aś ās ra* (particularly the *śās ra* associated with Manu, Yājñavalkya, Narada, B haspati and Vi nu), and the two epics, the *Rā āy a a* and the *Mahābhārata*. These texts in their various layers form the main corpus of evidence for this thesis. Further, the layering of the texts is crucial to our discussion here. There has been frequent argument over their hierarchy and the implied order in which these texts are accessed by society.

rutī, sm ti, sadācāra and *ātmana u i* are arranged in their order of importance when determining solutions to societal problems. However *śrutī* and *sm ti* represent an entire corpus of literature (*śās ra*) and must be further divided in two categories: what they might more precisely represent and in terms of their inherent meaning. The *dhar as ū ras* and the *dhar a śās ra*, including the two epics are identified as part of *sm ti*, to be distinguished from *śrutī*.¹⁰⁰

rutī, translated literally, refers to sound, to hear or the sense of hearing, and is typically used with reference to the Vedas in particular but might be extended to include the writing contained in the *Brahma as*, *Āranyakas* and *Upanishads*. In *Brahma ca* thought *śrutī* represents the sacred ‘texts’ believed to be *apaurusheya* or without a human author and therefore revealed, eternal and changeless, even timeless. *Sm ti* ‘texts’ are greater in number than the *śrutī* ‘texts’, and are perhaps less clearly defined; these are, in a manner of speaking, regarded as interpretative appendixes to *śrutī*. They therefore, make room for and even recognise human agency in their authorship and compilation. Further, *s* may appropriately be defined as the “remembered wisdom of the race/people” transmitted from generation to generation (Bühler, 1882: xvi-xvii). This is most plainly stated in the *Apastambadharmasū ra* where the founding author or school

⁹⁹ See, also Whitehead (1995: 53-17) for an incisive discussion on the nature and validity to ‘con’-text to textual anthropology.

¹⁰⁰ For a clear discussion on differences between the *dhar as ū ras* and the *dhar aśās ra* see Banerji (1962: 2) and Kane (1968: 299-306)

makes no claim of divine revelation, but instead views the *sū ra* as a new systematic arrangement of extant precepts on sacrifices and ‘law’.¹⁰¹

The later *śās ras* however, frequently attribute the pronouncements they contain to either particular deities, for instance the *Vi n s* to the god Vi nu, or fallaciously to the primeval man Manu like the *Manus*. This represents a clear attempt to grant these texts supreme authority and deeper antiquity. makes the cumulative wisdom and tradition of the past available to the *Brahma ca* community. Traditionally *śruti* is considered most authoritative, in comparison to *s*, which is accorded a high status as well. Smith (1987: 47) argues that virtually all literature wherein actual doctrines and practises of Hindu sects are “codified” equal *s*. He believes that several strategies were employed to invest these texts with deeper authority parallel with the Veda’s timelessness. Crucial to my purpose is how through recurrent restatement, reproduction, recapitulation, reflection and even reversal, these texts dominated streams of thought. As Smith (1987: 46-51) states:

“...these are some of the ways in which post-Vedic Hindu texts create new traditions and transform older ones (i.e. change them, from an outsider’s perspective) while they are perpetuating the “Vedic tradition” (i.e. do not change them from the orthodox Hindu view). By representing new texts and practices as in some way connected to the Veda, change is both legitimized and denied and continuity is both affirmed and unrestrained”. This process thus transforms *s*, technically “non-canonical”, into “canonical” and authoritative; undertaken by the *Brahma as* for the *Brahma as*.

Most people who claim to be Hindus acknowledge the notional authority of the Vedas, however they know their religion not through the apparently revealed *śruti*, but rather they rely on the ritual traditions of *s* texts or even remembered versions of them. literature has been labelled the “functional scripture” of and for Hinduism (Graham, 1987: 75).¹⁰² In its most basic translation *s* signifies tradition. Cantwell-Smith (1993: 129) observes that the *śās ras* are scriptural in as much as they exert moral severity and authoritativeness not as devotional literature. He believes that the *śās ras* comprised of “...a classical exposition of formalized moral—also ritual and other—conduct, normative and obligatory”. Although Cantwell-Smith writes with reference particularly to the *Man s*, this allusion is easily transferred to the *śās ras* as a whole.

¹⁰¹ Highlighted in this manner ‘law’ represents the more fluid notion of what is considered right and not its modern state projected positivist definition of a state-centric book law.

¹⁰² See also Cantwell-Smith (1993: 108) and Flood (1994: 72). Again we note the fixation with uniformity.

Interestingly, he terms the epics as scriptural since most Hindus discern their worldview and their lives in conscious relation to these more than any other texts (1993: 127-8).¹⁰³ This is not echoed by academics generally, for instance van Nooten (1978: 66) is reluctant to afford sacred status to these texts, highlighting the several additions, corrections and interpolations these texts have seen. He therefore specifies that this is why they cannot lay claim to any definitive text. I believe that it is this fluid nature, and the merging of collective memory and tradition that combined create a powerful opiate for public consciousness, which then influences the ‘living law’, which in turn will have influenced the texts.

To examine the role tradition has played in shaping texts is most clear when we consider the role expectations of women contained in the *Brahma* i cal discourse. This has informed and continues to inform notions of how women should be treated in society, and their appropriate place. This discourse is explicitly expressed in the *dhar a śās ra* and illustrated by the epics; it created a “natural” woman who was fundamentally a problematic category. From the start of Sanskrit literature, there is a fascination with the fact that only women can give birth, so that men, even though they are the textual specialists, are at their wit’s end about one of the major secrets of life. In later layers of text, which appear to reflect much misogyny, she had a voracious sexual appetite, was elementally unruly and therefore dangerous. A growing body of references in the literature characterises women as sexually insatiable. This is not new and may be seen in some of the earliest passages from the *gveda* which make up the Urvaśi-Pururāvas¹⁰⁴ conversation. However it appears that there was a rapid rise in these references during the period of compilation of the *dhar aś ās ra* and the didactic sections of the epics. The *Man s* , which takes a somewhat ambiguous approach to women, to put it mildly, clearly assigning women to bed and the seat, jewellery, lust, anger, crookedness, malevolence, and reprehensible conduct states at one point:

Good looks do not matter to them, nor do they care about youth: ‘A man!’ they say, and enjoy sex with him, whether he is good looking or ugly.

¹⁰³ An interesting phenomenon was recorded by national dailies in the late eighties when the National television network serialised both epics. Reportedly people bathed before switching on the television to watch these shows and some worshipped the television sets (Kasbekar, 2006: 152). Also several actors who played deities went on to have well-mapped political careers. These events underline the relevance these epics continue to have on an Indian public. No similar strain has been recorded with reference to other religious literature. See for much detail Kasbekar (2006).

¹⁰⁴ This refers to two characters in an ancient poem: Urvaśi is the name of the girl, and Pururāvas the man.

[Therefore] It is the very nature of women to corrupt men here on earth...

(MS 9.14, 17; 2.213)

Leslie (1996b: 89) uses the Bhangasvna episode in the Mahābhārata (13.12.47), where Bhangasvna has been transformed into a woman by Indra and later when granted a boon by him elects to remain a woman, as illustrative that female sexuality did not always constitute such a negative aspect. The reason Bhangasvna gives is that women enjoy greater sexual pleasure than men. Leslie (1996b: 89) states: “This story makes a virtue of the much-maligned sexuality of women”.¹⁰⁵

It is apparent that the *Brahma ca* discourse constructed women as unruly, fickle, inconsistent, sexually insatiable and cunning, hence by implication wicked. Numerous reasons are stated for the increased number of sayings on the essentially sinful and sexual nature of women in the literature of this period. Primary among these is the growing significance of asceticism in *Brahma s* to which women proved a hindrance. The theme of the seductive temptress disrupting the male ascetic’s *tapas* is common in ancient Indian literature. Asceticism popularised the concept of seminal retention as a symbol of male power contrasting the fact that women had no control over their bodily fluids. Jamison (1996: 15-17) suggests that these statements on women’s sexuality serve to define an “area of anxiety”, implying the need to control.¹⁰⁶ Asceticism did play a colluding role in the construction of women as sexual, therefore sinful. The main concern of the *Brahma a* ideologues appears to have focussed on the control over women’s sexual nature and her procreative potential due to the imperatives of land, lineage and family and most importantly *ar a*. Before such control could be exerted it was necessary to establish that there was a need for control in the first place. Therefore the construction of women as dangerous is linked to the ideological structure of *Brahma i sm* and was not a result of a concern with asceticism alone. How was this control achieved? In answering this question the influence of tradition over text and thereby of text over tradition becomes clearer.

Chakravarti (1993: 582-583) believes that one of the primary mechanisms of control was the *pativrata* rhetoric. Despite a preoccupation with pure lineages and the

¹⁰⁵ For further illustration of *strisvabhava*, the inherent nature of women see Chakravarti (1993: 582), Leslie (1995: 246-272; 1996b 88-89) Jamison (1996: 12-15) For the wicked nature of women in Buddhist texts see Law (1927: 38-60), Gross (1993: 40-48), Paul (1985: 3-50)

¹⁰⁶ See Smart (1992b: 7-32) for an elaborate discussion and exploration of similar preoccupations to control the unruly nature of women in Victorian England with regard to their reproductive and sexual nature.

importance of *varṇa*, women are not categorised as per any male criteria like *varṇa* or *āśrama*. The *dharmaśāstras* provide minute detail as to the criteria according to which men are to be classified however; women do not appear to have required such classification. According to Olivelle (1993: 185-189) the options of Vedic study and renunciation do not seem to exist for women by the time of the *dharmaśāstras*. The *Māṇṣu* (2.67) emphatically decrees that for women marriage must be equated with the *upanayana*, which marked the beginning of Vedic study for *dvija* or twice-born men.¹⁰⁷ By the time of this text a woman's potential for intellectual and spiritual fulfilment no longer seems necessary. Many historians argue that in the Vedic period women could participate in certain religious activities en par with men, they suggest that this parity gradually declined after the Vedic age.¹⁰⁸

The *dharmaśāstras* reflect that the essential *varṇa* and *āśrama* categories of *Brahma* i sm did not apply to women.¹⁰⁹ Smith (1994: 4) declares that all knowledge is power and knowledge is the product of categorisation. He suggests that usually a classification system is the invention of a specific group of people, whose power and privileges are in part based on their ability to seize the “enunciative function” and expound on how the universe is structured. But those who generate the categorical system also place themselves at its forefront. There is, therefore, a social and political dimension to a classificatory system which represents itself as pure knowledge. Interestingly, women are mostly identified by their physiological and bodily functions. Motherhood is held as model and all important. Ray (1999) discusses at some length how women who did not attain motherhood were considered deviant. What is important to note is that the way women were categorised and represented in the dominant *Brahma* ca discourse in turn influenced how women perceived themselves and how they reacted to the dominant

¹⁰⁷ There appears to be concurrence in the other *śāstras* as well, see *śaṅkha* 2.32, *Yajñavalkya* 1.13 and the *Mitākṣara* on the *ānaṁkāya* 1.15.

¹⁰⁸ These studies are often influenced by Altekar (1938) and the nationalist school who claim the Vedic era as the golden age of Indian history. This argument is one-dimensional and therefore insubstantial.

¹⁰⁹ Olivelle (1993: 188) has suggested the existence of a body of evidence for female initiation and study in the ancient period. He further disputes the view that the married state could have constituted an *āśrama*. It appears that women technically enjoyed twice-born and caste status only through their paternal kin affiliation and not through their ritual rebirth through Vedic initiation. In the didactic texts women are rarely referred to by their caste names, and there is virtually no distinction between *dvija* and non-*dvija* women (Ray, 1999: 62). The only exceptions include specific discussions on marriage and inheritance, and the caste status of sons born of mixed caste marriages. Additionally the *VasisthaDharmaśūtra* (20.37-40) recommends that the punishment for killing a woman should be determined according to the caste of the woman, as also the punishment for adultery (21.1-5).

discourse. In this way tradition exerts control and influence over the formulation of ideas in these ‘texts’ and also impacts on the ‘living law’ and thus on perceptions of *sadācāra*.

Brahma s not only established the dangerous nature of women but it was imperative to disseminate this worldview as well. Traditionally the *Brahma as* are the creators, perpetuators and interpreters of the *s* texts, a privilege they guarded zealously. How then did these messages permeate the common consciousness of both women and society at large? The explanation might lie in the origin and composition of the *sū ra* texts. Although compiled in Sanskrit in the Vedic *caranas* by *Brahma as*, they may not have been targeted at the entire Aryan community, but meant rather for specific groups of *Brahma as* (Bühler 1882: xiv). Lipner (1994: 81-82) agrees:

“The reason for the popularity of the *sūtra* as a means of storing and passing on lore in Hinduism is not difficult to find. The *sūtra* attests to the fact that Hindu wisdom has traditionally been transmitted orally, and it facilitates such transmission. The *sūtra* is a memory device. It is far easier to remember a *sūtra* or collection of *sūtras* than a normally rendered, and far more verbose, text. Further, the *sūtra* points to the fact that *Brahmanaic* wisdom was more or less safeguarded knowledge and transmitted as such. Its pearls were not meant to be cast before swine, namely, those unfit or unprepared to receive it. The *sūtra* form enclosed Establishment wisdom, enabling it to be unlocked only in appropriate circumstances. It was a vehicle and symbol of authority”. [emphasis added]

In fact until the *Man s* a particular *sū ra* belonged to a particular Vedic school and was probably not even shared by all *Brahma as*. Women and *śudras*, possibly *vaiśya*, were excluded from this learning. The later *dhar aśās ras* seem to have enjoyed a wider audience; most of these would have been available to *Brahma as* and literate *k a r yas*. Despite an expansion in the audiences of the *śās ra*, women and *ś d ras* would have remained on the outside.

Brahma s, particularly in response to the burgeoning numbers of the newer heterodox sects of Jainism and Buddhism, recognised the importance of these two sections of society to securing the *Brahma ca* scheme of the world: *ś d ras* as the producing and serving class; women and specifically upper-caste women as a necessary part of the *Brahma ca* worldview on family, caste, land and kingship. They had to find a way to address these groups without breaking the norm of privileged access. And the greatest clue to how this was achieved is in the *Brahma i cal* takeover of the epics, and later the *r ā a s*. The redacted epics both overtly and covertly exemplify *dharmic*

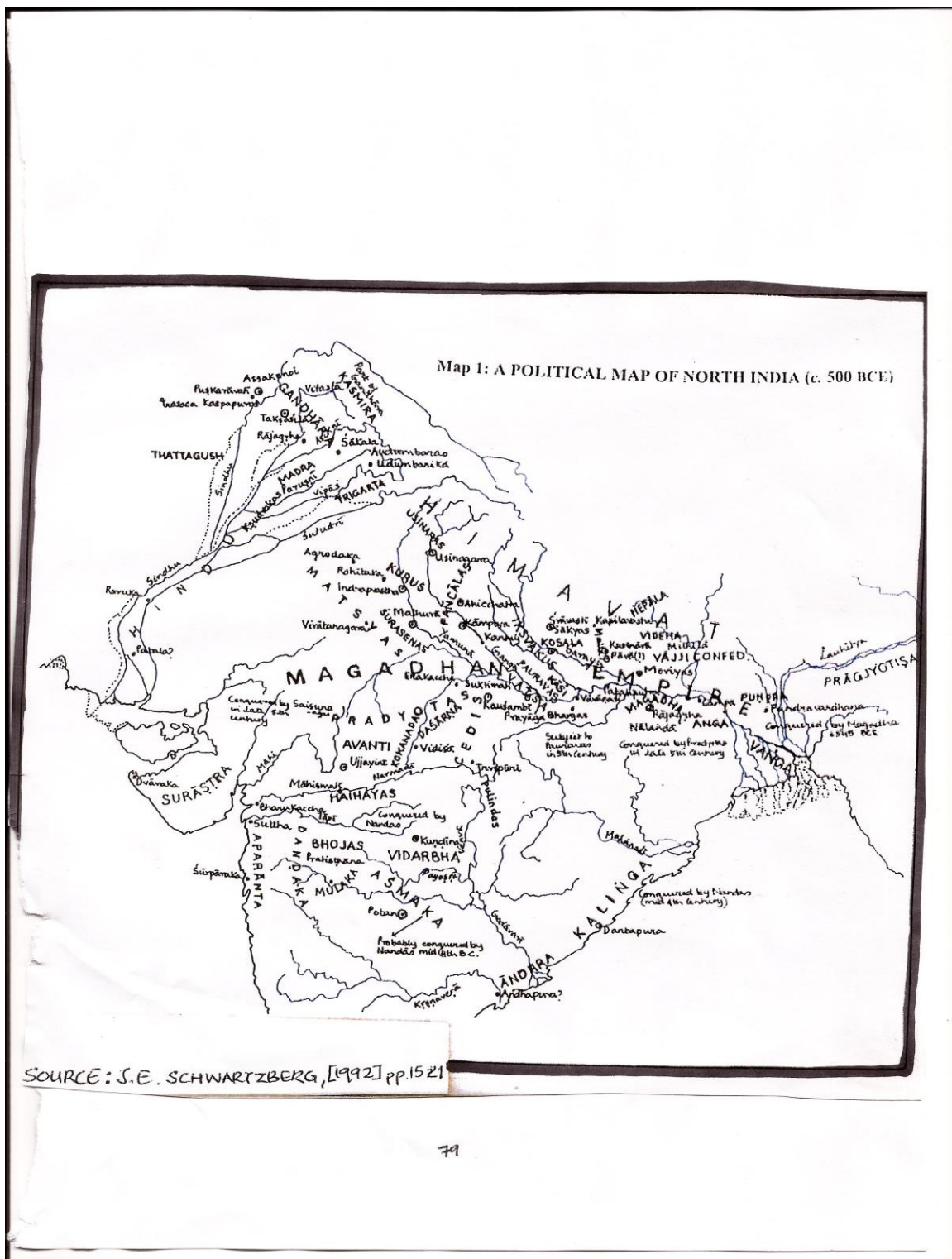
principles and betray a preoccupation with them. As Jamison (1996: 9) points out, there was a notable correlation between the idealised rules of conduct in the *dharma* treatises and the idealised narratives in which *dharmic* principles are applied. The primary function of the epic narratives become exemplary and in this manner the dissemination of *Brahma* c social values was achieved. In fact women and *ś d ras* were urged to listen to recitations of the epics during important ritual ceremonies and at temples, as the very act of listening would endow the listener with religious merit. Remarkably, of course, this also reflects to some extent the pattern of the various emerging *bhakti* traditions, which use different forms of text.

Winternitz (1991: 311-314) surmises that the beginning of epic poetry may be traced to the Vedas, considering that their recital might have constituted a part of early religious ceremonies. They may not have been a formal book, he conjectures. Possibly, there may have been a tradition of professional story-tellers travelling like the *sū as* and the *maghada* bards weaving popular folk themes, incorporating elements of local colour into the nuclei of the tale they were telling or singing. See Map 1, for a geographical representation of the kingdom of *Maghada* where some of these bards are believed to have originated, therefore the name *maghadas*. By the Buddha's time there was perhaps a vast store of prose and narrative verse constituting a "literary public property", which was then drawn on by the Buddhist and Jaina tradition as much as by the epic poets. The ballads of the *Ramayana* and *Mahābhārata* appear to owe their origin to this tradition of heroic ballads. They are believed to have been transmitted through recitation by these *sū as* and *maghadas* spreading them from community to community. It is conjectured that the ballads and tales of the bards were similar to the *akhyanas* of the *gveda* and more specifically to the *gathanarasamsi*, *itihāsa* and *r ā a* which may have been recited as part of Vedic ritual. Brockington (1984: 9; 1998: 4-25) concludes that this fluid mass of material must have represented a tradition parallel to that of Vedic literature rather than having been a part of it. The *Mahābhārata* is the longer of the two epics and presents itself as a more composite work. Its very structure suggests the possibility that it derives in the main from a series of oral narratives. The *Ramayana* by contrast is characterised by a far clearer continuity in its narrative verse. The latter contains fewer moral and folk tales and appears structurally more uniform.

In her analysis, paying every minute detail of structure and story attention, Smith (1972: 65) suggests that the core of the *Mahābhārata* is contained in the gambling match,

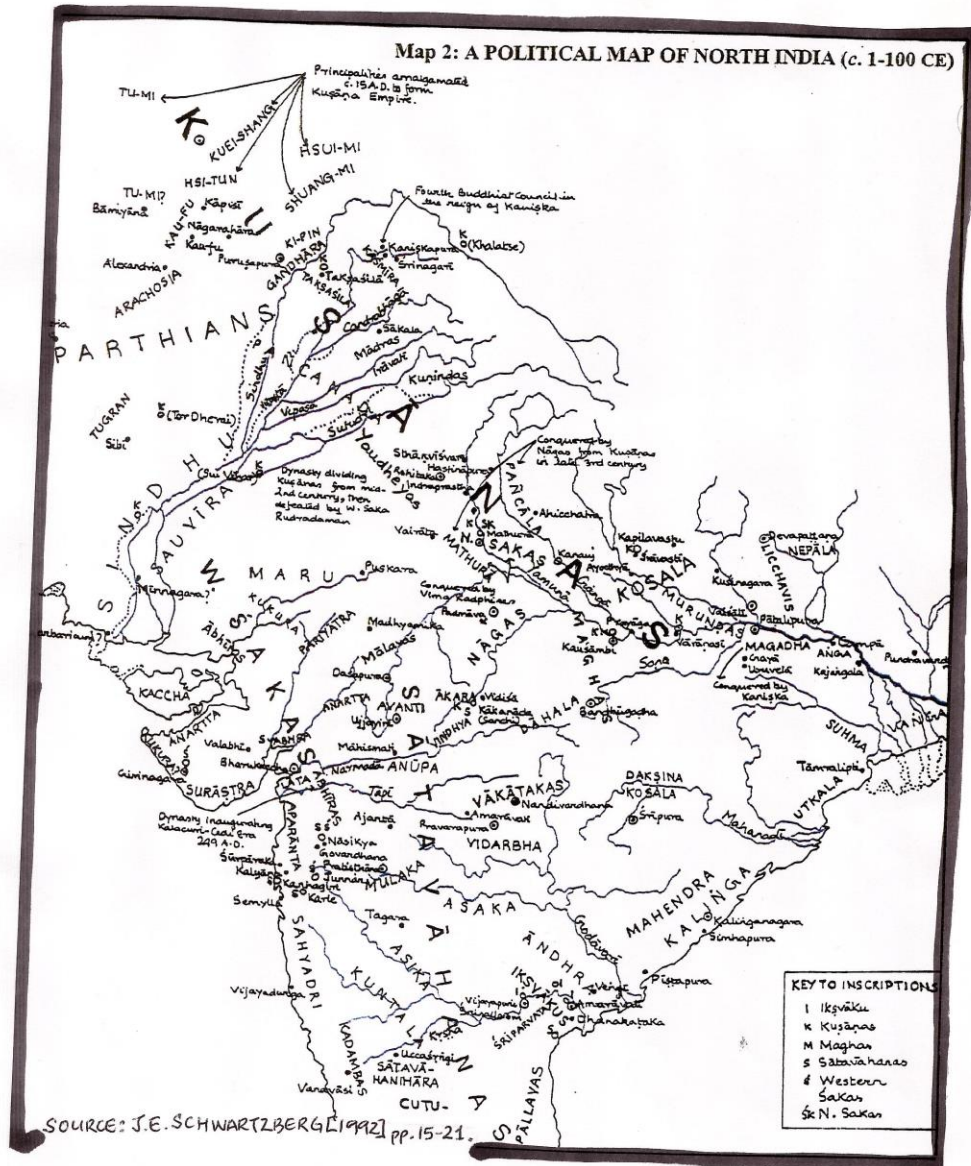
the embassies for peace and the final battle. The remainder she analyses as encrustations. Most of the added material appears didactic in nature. Hopkins (1889: 67) distinguishes between the early narrative core and the later didactic incursions identifying the former as epic and the latter as pseudo-epic present mainly in the twelfth and thirteenth books. He elaborates:

Upon the original story... have been grafted many 'secondary tales' (upokhyana); and upon these, have been inserted whole poems of romantic, ethical and theological character, having nothing to do with the Epic itself. We must, however, remember that our epic has been enlarged in two ways: first by natural expansion of matter already extant; secondly by the unnatural addition of new material.



MAP 1

Political Map of North India (circa 500BCE)



MAP 2 Political Map of North India (circa 1-100CE)

Warder (1972: 169) refers to the present form of the Indian epics as being “artificial” rather than true “narrative” ones. Thus we may conclude that aside from the bard’s repertoire of myths and legends of *Brahma ca* origin, didactic sections emphasising the superiority of the *Brahma as*, cosmological, genealogical and geographical matter myths of Visnu and later Siva, *Brahma ca* fables, parables ascetic poetry and moral stories (part or entirely in prose), were included in the redacted *Mahābhāra a* (Pusalkar, 1955: xxi).

With reference to dating this epic there has been little or no agreement. Improving on previous scholarship, Hopkins developed an intricate schema to clarify that the *Mahābhārata* developed in four stages. First by 400BCE was a collection of Bharata-Kuru story threads. In its second phase, by 400-200BCE the Pandavas were introduced as heroes with Krishna characterised as a demigod. The third stage, around 200BCE-200CE, saw the recasting of the entire epic with Krishna now as Godhead with new episodes and decisively didactic material being added. In its final phase possibly around 200-400CE, the introduction and the later books were added. Winternitz (1991: 454-75) concurs with Hopkins (1969: 386-407) adding that by the fifth century CE the epic already constituted a religious text and discourse.¹¹⁰ Scholars appear to agree on an approximate date of 400BCE-400CE. Dahlmann contends that it was the work of a single poet who put together pre-existing narratives and didactic elements with the objective of popularising the *dhar aś ās ra* among the populace and therefore could not be any later than the fifth century CE.¹¹¹ Jacobi concluded that the current shape and narrative of the epic in circulation today was no later than the second or perhaps third century BCE.¹¹²

The authorship of the epic is important here as it establishes the authority and deep reverence with which it is treated to this day. Scholars conjecture that though it was composed in three main stages—*Jaya*, *Bharata*, and *Mahābhāra a*—it is the cohesive creation of a single mind, the poet saint Vyasa (Pande, 1990: 123). Some argue the text is a compilation of contributions from several sources across generations. And though Vyasa himself is regarded as mythical and therefore only symbolically the author, this augments the *Mahābhāra a* being assigned the status and authority of a religious text

¹¹⁰ For an updated argument on dating the *Mahābhāra a* see Brockington (1998: 130-155).

¹¹¹ Cited in Sullivan (1990: 16)

¹¹² According to Lassen the epic was pre-Buddhist, with the second phase of additions taking place around 400-450BCE, although insertions of a Kr naite nature continued for longer. (See Pusalkar, 1955: xxvi, xxx, xxvii-xxviii, xxx-xxxi)

(van Buitenen, 1973-78: vol.1, xxiii; Sukthankar, 1933-59: vol. 1, ciii). Sullivan (1994: 377-401) comments that in the Hindu tradition religious authority is often personal, embodied in the figure of the *guru*. Vyasa in fact is believed to stand at the head of the *guru parampara* or teacher tradition as the originator and authenticator of all important teaching. And therefore Vyasa's authorship serves to validate the *Mahābhāra a* and its claim as the fifth Veda, which in turn reinforces this epic text with supreme religious leverage.

Further, as Lipner (1994: 74-85) argues the form of these made them easier to remember and therefore easier to disseminate at a later period through memory and recitation. Therefore, the epic has also social leverage, for an elite who intend to incorporate, even infect a wider society with their own ideals.¹¹³ As we will see this ability to transmit ideals in this manner has specific repercussions for the acting out of dowry as accepted and appropriate behaviour in the context of marriages past and present. This recalls Edward B. Tylor's (1873) model of the transmission of myth, and legends in ancient pre-literate societies. Edmund Leach (2004: 168) characterises the transmission of myth, in terms which fit the argument here well. He discusses Levi-Strauss's (1949: 39) idea of a "breakthrough from nature to culture".¹¹⁴ Applying this idea in terms of the transmission of custom in a similar pattern Davis (1999: 164) recognises *dhar aś ās ra* literature "in general" as a record of "customs". Davis (1999: 166) also notes the reflexive process from custom through capture and "transmission" to a more crystalline "revivified custom".

About the *Mahābhāra a* however, who might we ascribe the authorship to? As discussed, originally the epic began as an assortment of heroic ballads and tales, recited or sung by bards possibly for public entertainment. There was no cohesive text transmitted verbatim, instead it would have consisted of a compilation of loosely related stanzas, embellished and improvised with every telling. There would have been room for local colour, incorporating happening that were current to illustrate instances which might appear out of context or even archaic. However, it seems that gradually interest

¹¹³ See Lipner (1994: 25-165) for an explanation of how "the Veda" functions as "scripture" and notably for the present purpose for the relevance of caste and narrative (108-145), also a discussion on the part folklore plays in the wider social network in India in the context of the growth of intellectual power of an entire group (146-164).

¹¹⁴ As cited by Fox (2004: 167-8) who discusses Levi-Strauss in the light of the Freudian concept of the psychological event of the recurring Oedipal myth as a complex in numerous global societies. Fascinating though this notion is there is no room for a further analysis here, for further detail see particularly Fox (2004: 161-177).

dwindled from purely local and dynastic matters and the epic experienced a transformation. Mythological and cosmological narratives of *Brahma ca* origin, moralizing sections focussed on *Brahma ca* philosophy, law and ethics were added converting it virtually into a “whole literature” from its initial shape as a poetic production (Winternitz, 1991: 317-319). This transformation seems to have been primarily caused by an extensive *Brahma ca* involvement, although some scholars disagree. For instance, Grierson maintained that this epic belonged rather to the *k a r ya* tradition (Pulaskar, 1955: 29) and later Smith (1980: 49) notes:

“As the *Vedas* and their supporting literature were the ‘property’ of the *Brahma s*, so the epic was the ‘property’ of the *a r yas*. The epic dealt with their ‘legendary’ heroes, and put forward ‘their’ code of conduct it was a statement of ‘their’ mythology”.

Smith continues that although the *Mahābhāra a* may have belonged to the *k a r yas* it might not have been composed by them.

The creators and transmitters of the epic were the *sū as*, a specific caste group who benefited from a symbiotic relationship with the *k a r yas*.¹¹⁵ The text underwent extensive expansion, virtually altering its character. It was *Brahma s d* and characterised as the fifth Veda and therefore the property of the *Brahma as*. The epic now represented a “religious” text, its custody having passed to the elite *Brahma a* educators from the bards. Goldman (1977: 3) argues credibly that the Bhargava sect of *Brahma as* is responsible for this process of *Brahma s a on*. “The Bhārata is the definitive Bhargava text” he asserts.¹¹⁶ Shende (1943a) surmises that the Bhrgus and the Angirases are responsible for this transformation (Brockington, 1998: 156). Some scholars, like Sullivan (1990:19), do not agree that the Bhargava *Brahma as* strategised this transformation, while Winternitz (1991: 319-320) argues that the *Mahābhāra a* was reworked by court poets and temple priests and not any particular schools of Veda-knowing *Brahma as*.¹¹⁷

Possibly because it is shorter and more uniform, telling the tale of one dynasty and its virtual destruction, the *Ramayana* is more popular than the *Mahābhāra a*. Traditionally credited to Valmiki the *Ramayana* is called the *adi kavya* or the essential

¹¹⁵ This may have been similar to the privileged status enjoyed by the *carana* court poets, in the medieval Rajput court with their kings, for whom they composed praiseworthy heroic ballads.

¹¹⁶ For a similar argument also see Sukthankar (1936: 67-71).

¹¹⁷ An enlightening analysis of the process of *rah ana sa on* of another epic, the contemporaneous oral epic of Western India Pabuji is highlighted by Smith (1980: 55, 73) as exemplary of what may similarly have transpired with the *Mahābhāra a*.

poem. It is impossible to know whether Valmiki was a historical person or not. It tells the story of Rama's exile and banishment, the abduction of his wife Sita, the consequent battle with Ravana, and finally his triumphant return to Ayodhya, followed by his subsequent rejection of Sita. Most scholars agree that the current version dates from about the third/fourth century BCE to the second century CE. It began life as an anthology of five books, the first and last being later additions.¹¹⁸ There is speculation but not complete agreement among scholars that the Ramayana also underwent *Brahma* i sation, possibly by the same sect of Bhargava *Brahma* as implicated with the metamorphoses of the *Mahābhārata* (Brockington, 1984: 15; 1998: 156). This incorporation of *Brahma* ca values into what originated as fluid folk ballads is crucial evidence to our discussion (Blackburn, 1989).

The notions elaborated in these epic poems are finally amalgams of dharmic ideals set out as models for non-*Brahma* i c society to follow. The many myths and stories threaded together in both epics contain overriding preferences for dharmic behaviour, gently expounding what is right. Ideal marriages between Rāma and Sitā are highlighted, notably with anaka, Sitā's father, giving an enormous dowry. These stories set the precedent and gradually formulate a trend followed by wider society at ground level, whether or not they can afford the same kind of pomp and show as a medieval Indian king.

The problem of translating these epics, composed in the sacerdotal language of Sanskrit, was solved if one considers the Indian tradition of priests holding recitations in temples for women during which moral and *dharmic* ideals were meaningfully demonstrated using instances from the epics and explaining them for the audience. Leslie (1995:22) in the context of the *Strīdharmapaddhati*, an Indian text on the duties of the "perfect wife", notes: "It is therefore not unreasonable to assume that Tryambaka's *Strīdharmapaddhati* was written precisely for this purpose: to be read aloud and expounded upon for the benefit of women of Thanjavur court during their afternoon siesta period. The women themselves need not have been proficient in Sanskrit, or even literate. For the court pandit responsible for recitation would no doubt have translated

¹¹⁸ Dating the *Ramayana* has been no mean feat, see Pusalkar (1955: xxxix-x1), Winternitz (1991: 500-517), Brockington (1984:12). Brockington (1984: 307-317; 1998: 377-397) divides the current version of the epic into five comprehensive stages of development and composition. He forwards the theory that the first stage was composed in the sixth-fifth centuries BCE, the second around the first century BCE and the third possibly between the first and third centuries CE, the fourth stage at the start of the fourth century. And the final fifth stage is hardest to date as it was later than all these stages.

freely and expansively into Marathi in order to bring these vital pronouncements concerning proper behaviour of women to the attention of those whom they were intended". Whether what people were told to accept as *sadācāra* was then actually followed in practice is of course a rather different matter, further discussed below.

2.4 Tensions between cultural texts and social tradition

It is essential to consider the peculiar social and political conditions that led to the evolution of *Brahma s* and promoted the writing of the texts in order to understand the ongoing tensions between cultural texts and social traditions. In particular this section highlights the emphatic influence of social traditions on the way cultural texts were shaped. For our purpose it is worth noting, the development of a monetised economy influenced the manner in which these texts functioned in society.

From about the sixth century BCE to the fourth century CE the establishment of centralised monarchy took place; coupled with the consequent problems of its consolidation and continuation. There was an emergence of private property, a monetised economy and the strengthening of the *ar a* system, as mentioned earlier, with its associated challenges, all of which had crucial implications on the emerging *Brahma ca* discourse and its related traditions. In this regard it is useful to highlight Eli Sagan's (1986: 291-4) theory, which identifies three major stages of socio-political development, since this captures the nature of the changes occurring during this historical period.¹¹⁹

The growth of territorial kingdoms and private property necessitated the transfer of land and kingdoms through lineage, transacted for women, and not only in India, primarily through dowry.¹²⁰ Therefore, purity of the patriline became essential; it was considered corrupting if the lineage was not continued by off-spring from the same line. Additionally, a large number of women became attracted to the simplicity of Buddhism in contrast with the *Brahma ca* principles of land, family and ancestor worship. This

¹¹⁹ See in particular Sagan's incisive introduction (1986).

¹²⁰ Dowries have strengthened fiefdoms and kingdoms throughout history. One noteworthy example is the transfer of the islands of Bombay from the Portuguese to the British in 1661, when Catherine of Braganza married King Charles II. See the chronology of a city and its acquisition as a dowry in *Bombay: The cities within* (Dwivedi, 1995: 342). Also, the Vikings remained in the Scottish Isles for longer than in any other part of Great Britain and Ireland. The Hebrides were part of the Viking kingdom on the Isle of Man until the 13th century, when they were lost at the Battle of Largs. Shetland and Orkney were part of Norway and then Denmark until they too were given to Scotland, as part of a dowry payment, in the 15th century. From the *Vikings in the British Isles* by Nicola Cook and may be found at: http://www.bbc.co.uk/history/programmes/bloodofthevikings/british_isles_03.shtml.

resulted in strengthening the preoccupation with controlling the sexuality of individuals, particularly women. It was the recognition that *Brahma s* was dependent on its women to perpetuate its envisioned moral and social order that possibly made the ideologues of *Brahma s* confront the question of women's sexuality and their position in society. The *Brahma as* perhaps hoped that through the control of women's reproductive capacity and fertility they would bring about the social reproduction of their worldview.¹²¹ Here we have evidence of an early preoccupation with the 'woman question' as the IWM would classify it.

This social reproduction was in effect the maintenance of the ideological and political apparatus that ensured their continued class and caste domination. As Moore (1994a: 90) comments,

“The problem of societies, after all, is not just to reproduce sufficient babies... the main difficulty is rather to produce and reproduce persons with particular social identities... when societies reproduce individuals, they do not just produce biological individuals, they produce social and socialized persons”.

Therefore we cannot start at the point of the inefficacy of the law in terms of the dowry legislation, rather we, on the one hand, need to question and examine the tensions between the old cultural texts and the playing out of custom or *sadācāra*,¹²² which may be equated with social tradition here. Both Derrett and Lingat have acknowledged the place of custom as “queen” in ascertaining *dharma*, or what is the right thing to do. The common error they made was to presume that these teachings were accessible in ‘text’ form to society as a whole. Therefore they discounted the application of social tradition as the means of ascertaining what the right thing to do is. If we examine the following verses from the *Man s*, which clearly places a fourfold approach to ascertain what is *dharmic* or appropriate behaviour:

“The root of religion {*dharma*} is the entire Veda {*śr*} (then) the tradition and customs {*s*} of those who know (the Vedas), the conduct of virtuous people {*sadācāra*}, and what is satisfactory to oneself” MS 2.6

“The Veda [*śr*], tradition [*sm ti*], the conduct of good people {*sadācāra*} and what is pleasing to oneself {*ā āna*} they say that this is the

¹²¹ This ideal system bred the problematic conceptualisation of the essential woman and intensified confusion in placing women as goddesses and yet denying them any such glorified status at ground level (Arya, 2004: 50).

¹²² A more in-depth discussion on *sadācāra* occurs below as this discussion progresses further.

four-fold mark of religion (*dharma*), right before one's eyes" MS 2.12 (Doniger, 1990.17)¹²³

The error lies in assuming that at ground level everyone had access to *śruti* or *śāstra* texts. They accessed instead, as today, a fluid customary tradition or even perhaps morality described in the epics. In ascertaining their *svadharma*, Menski (1987: 19) speculates, individuals would necessarily have to turn first to their own reserve of customary beliefs of right and wrong, *ātmana u i* and in the face of a serious dilemma turn to their immediate respected peer group. When one Hindu individual consults with another we arrive at the concept of *sadācāra*. There is no dispute that the term itself refers to custom, better still "good" custom (Derrett, 1968; Lingat, 1973; Menski, 1997). This is not, however, necessarily a visible process. One may simply observe others and absorb guidance from the behaviour of the group, or even listen to advice, all of which may not be seen as means of ascertaining *dharma* (Menski, 1997: 19). The dialectic thus continues and the larger framework of law making at the village level too is informed and inscribed by this customary understanding of the right thing to do. Here we have a specimen of 'living law' at work, and viewed practically it is not a farfetched method of ascertaining societal order. Essentially in the work of Lingat, in particular, there are inadequate reflections of social reality in the civil lawyer's legal assumptions based on the old material.¹²⁴

Srinivas (1984: 8) points out that the social scientist will be fascinated by the resilience of dowry, and this underpins the current discussion. We are dealing here with the textual understanding of *sadācāra*, or the 'right' behaviour of 'good' people discussed in the *śāstra* literature. On the other hand, although the term *sadācāra* itself is not used currently, allusions to this concept of what is considered 'right' behaviour in a given situation is implicit in patterns of behaviour linked to dowry practices. Social expectations centred on the concept of '*izzat*', which may be translated as honour or reputation outline the importance of the practice. The groups that underline this importance may be the peer group or even the larger community to which one belongs. Marriage, interestingly, is increasingly seen as an institution that is required to register

¹²³ This translation of *dharma* continues to be problematic, like other core concepts in Hinduism: according to Menski (2002: 112) it is neither 'law' nor 'religion' and yet he believes it "encompasses parts of both". In fact this shows how internal categorisations in Hindu culture don't quite match with those of other religious traditions.

¹²⁴ See Menski (2003: 125-126)

the credibility of a couple in any given society. This then would tie in with the need to uphold the social expectations of an adequate dowry, for a father to maintain and often gain a higher standing in his social group.

Dowry, I argue, is clearly representative of *sadācāra*, and since this concept is interlinked with custom, we must examine here further how custom itself functions in the Indian context. In fact, if dowry is *sadācāra* then it is important that it should continue as it is perceived to somehow maintain harmony in society. So we need to understand how custom works in society, and in particular in Indian society in terms of dowry and the related dowry problem(s). Dowry is not important for itself alone but for the harmony it is seen to uphold in its very practice, as most traditions are.¹²⁵ With particular reference to custom we have seen how custom is encapsulated within the textual tradition and then replicates itself in the behaviour considered appropriate by that particular community. As discussed, the composition and compilation of the texts comprised primarily of enumerating the ideology of the dominant group, the *Brahmas*, who upheld themselves as models to all society. In so doing they created a tradition of upward mobility characterised in various ways throughout the texts. Kulin polygamy is one such by-product, dowry another. Since we have established that custom is indeed encapsulated in the texts in ideological form, it follows that what people practise today imitates the models set before them in tradition. Custom was put forward in terms of text, in terms of ideals. Text is not always required to attest reality, but the early texts in question do attest the ideal condition society was intent to attain.

Sagan's (1986) model forwards a three-fold evolutionary theory: primitive society, complex society and archaic civilisations. Briefly, a complex society may be further divided into three stages: chieftainship, early monarchy and complex monarchy. He calls the final two stages "advanced complex society". The primary achievement of complex societies is the creation of non-kin forms of social cohesion and later more complex kingdoms. Most advanced complex societies are characterised by a centralised monarchy, a political bureaucracy, the systematised collection of taxes, an organised priesthood, a hierarchically organised social system and the development of rich cultural traditions. Most notably advanced complex societies also coincide with the rise of sexual

¹²⁵ Interesting to note here is Haraway's (1988: 575-599) belief that "practice is persuasion"; in that the continued practice of any given act carries the coercive force of persuasion to continue that practice. And the emphasis in the present thesis is quite squarely on practice. See also Campbell, (2004: 162-182) for an able critique of Haraway's feminist reflexivity for use in social science studies, and its wider applicability.

and familial tyranny, following the destruction of the kinship order and forging the authoritarian power equations of the monarch and the father. This link between authoritarian regimes and the control of women is not uncommon and further has been noted elsewhere.¹²⁶

Bonvillain (1998: 132-134) similarly argues that in Indian society ideological constructs strengthening and supporting male dominance were built up further during certain historical periods. This, according to her saw the consolidation of state power. She observes further that the “systematic codification of Hindu laws” in the post-Vedic period was primarily responsible for granting “official sanction to strengthened patriarchal rights” and the decrease in the status of women in such a society.¹²⁷ This point of view is unfortunately supported by thin evidence. Sharma (1987: 9) believes that during the ninth to the third centuries BCE north India exhibited the same features described by Sagan as advanced complex societies. He further argues that if Sagan’s thesis is extended from the initial rise of kingdoms to the subsequent period when the stability and power of early kingdoms remained an issue, then a formative stage in the consolidation of kingdoms and nations, empires and dominions may be directly related to an increase in male dominance. How does he explain this? Sharma (1987: 11) declares that the period of the development of kingdoms was one marked by violent territorial domination and subsequent wars to consolidate those territories. These conditions he believes were conducive to the growth of aggression not only in the public, but also in the private sphere. Besides, uncertain periods in history are characterised by the religious emphasis on family and the need for male security and identity. Religion particularly emphasises continuity in the face of death and as a consequence patriarchal power is strengthened in these historical periods. This is further marked by the strengthening of patriarchal social structures; including marriage, patrilineal family organisation and succession through the male line. This ensures continuity just as it reflects male authority, power and control over key social institutions. Patrilineality is a clear means of fettering, through *dharmic* marriage, for their own benefit a woman’s procreative potential, and thereby rendering it un-threatening.¹²⁸ Sharma’s (1987: 10-15, 17) observation is that women were dominated

¹²⁶ Scott (1986: 1072) explains this pattern at some length.

¹²⁷ Bonvillain (1998: 132) also examines Chinese society under the same lens.

¹²⁸ See Leslie (1995: 320) on the “controlled state of marriage” and also Arya (2004: 37-40) on the *dharmic* marriage of Hindu goddesses as a means of disempowerment.

to encourage and ensure pure lineages, and further that this strict male control over women was intended to prevent miscegenation.

Roy's (1994: 290) opinion concurs with Sharma's; she observes that the consolidation of political authority in the monarchical state had an indelible impact on the gender equation in ancient Indian society. The change in the position of the *ha a* or householder effected and caused changes in the position of women within the household. Efforts were increased to regulate access to women, who were clearly identified as instruments of procreation. It is not possible that political and social changes alone impacted on this role or status asymmetry for women, or indeed how they were perceived. In fact the *Brahma ca* view of women was integrally part of its complete discourse on society, polity and economy and stemmed from a desire to replicate the ideal social order that identified itself with *Brahma s*. To bring this to realisation was the intent of these texts, to bring about the harmonic linking as seen in Plate 1.

The establishment of caste purity became almost an obsession; this was not possible without closely guarding women. Yalman's (1963) influential ethnographic study identifies that to date there is an inextricable link between female purity and caste purity.¹²⁹ Allen (1990: 6) elaborates on Yalman's view (1967) stating that wherever the caste system has prospered a parallel development of institutions concerned with control of female sexuality can be seen. He argues that in the Indian context, where purity is paramount and may be called the very idiom of status differentiation, there is a deep preoccupation with the maintenance of female chastity. As he puts it, the purity of the caste is a direct function of its womenfolk. Male members of a caste are largely dependent for their own status rating on the purity of their women—primarily on their sisters and daughters whom they give in marriage, and secondarily on that of the women they take as wives. This is therefore the justification of the rigorous need to control female sexuality.

To conclude, this period between 500BCE and 300CE constitutes the tumultuous consolidation of the state through a centralised monarchy, emphasising a monetised economy, private property and the ownership of land, which in turn influenced the conceptions of dowry and the position of women. The *ar a* classification was strengthened with a clear demarcation of rights and privileges accruing to the two upper-

¹²⁹ For further detail and specifics of Nur Yalman's quote see (1967) and also Chakravarti (1993: 579).

castes, through strategic collusion. As a response to the emergence of several heterodox sects *Brahma s* emerged from the earlier Vedism, expressing itself through a vast corpus of literature—the *śāstras* and the epics— that represent the first phase of documentary evidence presented in my thesis.

Notably the *Brahma ca* discourse on women developed during this historical phase, not merely as a result of, but inextricably linked to, the changes that were taking place. This discourse first created the “natural” women constructed as sexual and dangerous, thus creating the need to control her. They then evolved a system of classification and control according to their procreative status; wives and daughters were potential mothers, this division ensured *Brahma ca* control over women’s procreative potential. Finally, the *Brahma s a on* of the epics and subsequently of the *r ā a s* aided the dissemination of dharmic principles to women and the lower castes as we saw from section 2.3 above.

2.5 Custom and the concept of *sadācāra*

Customs bind people to their past, and can therefore be revered as tradition. The emphasis to continue things as they have been practised for generations gives a sense of harmony and propriety to society. Dowry as a practice appears to have the force and influence of such a long established custom. It is necessary to examine its binding nature in order to explain it in terms of *sadācāra*. Dowry and dowry-related practices both during and after marriage are governed by fluid rules operating within the jurisdiction of custom. This gives them the force of tradition and links them with unwritten sanctions, should there be any rescindment.

As discussed there may be positive inducements to conforming to established customs (Moore, 1978: 219). In the particular context of dowry, this may refer to gaining an exalted position in the eyes of the community, and further establishing status. Thereby the need to outdo other members of a social group with larger guest lists and more functions to celebrate a daughter’s wedding grants the father a prestigious position in the eyes of his peers and particularly the groom’s family. There is also an element, and that should by no means be undervalued or disregarded, of women themselves benefiting from the dowry system. Clearly, a woman who brings a lot of property, in whatever form,

into her new marital home, will have a different status than one who came with less.¹³⁰ Such a woman is aware that she contributed to the new living environment and is not merely a burden. It is this kind of argument that appears to have persuaded earlier anti-dowry activists like Madhu Kishwar (1986: 2-13; 1988: 10-13) to acknowledge that accepting dowry is not merely a form of ‘false consciousness’ on the part of such women, and rejecting a dowry would be shooting oneself in the foot. This would be so especially if one did not, as a woman, obtain a share in the joint family property. These brief comments at this stage indicate that the ‘dowry problem’ is a multi-faceted phenomenon and reference to custom here by no means implies uniformity. There is an expectation of a suitable marriage based on a certain standard, set by associated status roles and expectations. That these expectations are subject to constant change is picked up in a recent study of middle class moralities, which notes that in ‘love marriages’ these days,¹³¹ there is often absence of a dowry, which may be asking for trouble in quite unexpected ways (Saavala, 2010: 51-54).

Interestingly, there is no single term for dowry prestations consistently quoted through the many phases of literature (Derrett, 1984: 183).¹³² In order to ascertain the way in which the custom of dowry has been passed down into the contemporary consciousness as traditional we need to examine the source of the ideas which have most influence on peoples’ minds. Epic poetry and its recitation appear to be the mainstay for the transmission of popular idealised notions. As seen in the previous discussion on the role of texts in forming tradition we see the pivotal position occupied by the epic poems and their abduction by the *Brahma as* in order to propagate elite notions and incorporate these into the popular conscience. The manner of their being elevated to canonical status has also been discussed. We also saw how more recent televised representations of the ancient epics reinforced such practices as ‘traditional’. However, it is worthwhile to revisit this discussion here in order to sift the process by which custom is codified and the concept of *sadācāra* is informed.

¹³⁰ See the dilemma this can cause within a single family, between two sisters and their father in the British Sikh community for instance (Jhutti, 1998: 192).

¹³¹ The notion that love marriages do not inherently carry the dowry-related problems while arranged marriages do, is a discussion to be taken up at another time. This thesis cannot focus on this angle of the dowry debate regarding love marriages versus arranged marriages, and which is better in terms of dowry expectations, and demands.

¹³² See chapter 4 for an examination of the problems with defining dowry, also see Menski’s (1998: 15) discussion on the conundrum of definitions with relation to dowry.

Dowry is *sadācāra*, even if it is not spoken of as such. Not all *sad* or good *ācāra* behaviour is necessarily ‘good’ in terms of modern expectations and norms. We must not lose sight of the range and change of expectations of positive and negative aspirations and related behaviour within the field of marriage considering the period under review is admittedly vast. However, we have a clearly marked presumption to make at the outset. Dowry, whether considered good, or not, is entrenched in the field as an influential determinant of marriage and its negotiation. Dowry exists, as the frequent references to it in the fieldwork-based study on Hyderabad (Saavala, 2010) confirm. As a researcher, and a woman who has experienced the burden of expectations at the time of marriage, it is clear to me that dowry cannot be outlawed out of Indian lives, whether in India or elsewhere in communities of Indian origin.¹³³ Remarkably, rather than limit the scope of dowry as custom or living law, the statute that seeks to prohibit the practice makes us aware of how widely dowry functions across the Indian sub-continent.

Let us set a working hypothesis, then. Dowry as a cog of culture works. It has a proven life of its own; it has successfully operated for a minimum of three thousand years, give or take a century. It refuses to go away. Then perhaps, it is fair to stake an assumption that dowry is necessary to Hindu or Indian marriage in some way.¹³⁴ This is more than saying that people do not give their daughter in marriage with nothing at all. For Hindus/Indians/South Asians, there appears to be more to dowry than just adherence to ‘custom’. In this regard it has recently been found that Hocart’s (1970: 129) observation fits the preoccupation with emulating one’s betters; “[t]he desire to emulate one’s betters has been a most potent, perhaps the most potent, force in the diffusion of customs.” Hocart (1970: 129) further characterises this attitude as one of snobbery saying few people will “admit that they adopt new ways because they want to rise to a higher status or fear to drop to a lower one.”¹³⁵

Gold is crucial,¹³⁶ particularly to the performance of the three life sustaining rites religious duty (*dharma*), progeny (*praja*), pleasure (*rati*), in the early Vedic literature.¹³⁷

¹³³ See Fernandes (2009) “Sharia law UK” about how local people are dispensing their own law in the UK, for an albeit stilted opinion of this behaviour.

¹³⁴ See the case of Gracie and the acceptance of dowry in a Catholic scenario, where the Church accepts a ‘cut’ or percentage of the dowry in a Keralan Syrian Christian marriage ceremony. (Dowry Today, 2002 documentary)

¹³⁵ Jagbir Jhutti (1998: 192-193) found this attitude mirrored in the behaviour and explanations supplied to her during her fieldwork with the British Sikh community in the UK.

¹³⁶ See for much detail on ritual and its relation to gold, both in terms of material wealth and symbolic purity in Gonda’s *The Functions and Significance of Gold in the Veda* (1991)

Whether in the precise stated order of hierarchy or not is not relevant to the discussion in this chapter. However, the main argument is that gold, and its acquisition is central to a whole host of ritual ceremonies. In fact it is safe to state that wealth, prosperity and maintaining status are central to the harmonious functioning of early and later Vedic society. It could also be said that such concerns have not gone away today. The value and quantity of transactions at marriage may differ in accordance with the context and expectations of a given society and community at any one time. For instance in rural modern India a cycle would be valued in the late 1980s, but today a scooter or even a mobile phone may be seen as superior to a cycle. Similarly, in urban society a BMW may be no longer as valued as the latest model of a Japanese car. These changes are subjective to the fashions of a period and the relevance of material goods in a given context. However, the point that is crucial to our argument and hypothesis is that the underlying requirement is that ‘something must be given’ to accompany a departing daughter. Even in recent interviews fathers of marriageable women pay lip-service to an anti-dowry ideology, but concurrently almost whisper “how can you send a daughter empty-handed”.

My assertion is that something ominously powerful is at play here. The forceful public outcry against dowry in the decades following the women’s movement in India (1970s and 80s), and the institution of an anti-dowry statute (DPA 1961; following the Parliamentary debates of the early 1950s) has certainly informed the intelligentsia and the wider television watching, newspaper reading sections of the public. Enough to inform them, that the giving and taking of dowry is no longer acceptable behaviour. But what is it that asserts an influence and force more powerful than the sanction of law? What could possibly be worse than being imprisoned?¹³⁸ If social and legal sanctions are not enough to curb a practice that is officially prohibited, what is the underlying ideology that continues to function against the grain?

In my research I find that associative texts, like the *Rigvidhana* (Gonda, 1951), clearly attest the acceptance of wealth and its ritual significance at both the engagement and marriage ceremony. Interestingly *Vidhana* translates as injunction. My research suggests that in spite of not being overtly stated in the primary literature there is reference to wealth and its transfer in some form at the time of marriage. The accompanying texts,

¹³⁷ In terms of their order of hierarchy and relevance I examine this argument below, in 5.4.

¹³⁸ Oldenburg (2002) finds that Tihar Jail in Delhi is filled with women prisoners, mostly mothers and sisters-in-law, who are serving terms for having associations with dowry-related homicide.

namely the *grhyasū ras*, clearly discuss how and when wealth must be transacted and change hands. Also, the behaviour required by the bride-giving and bride-taking parties is enjoined in clear narrative explanations within the adjunct texts in different communities. In recent times, particularly over the last hundred odd years, it became a thing of national pride to be seen as a society, which lived by Gandhian, and ascetic ideologies, de-valuing wealth etc. But this is at the level of ideology, not of practice.

Kapadia (1958: 159) attests this view and finds that the ancient texts rank the purposes of marriage hierarchically as follows: religious duty (*dharma*), progeny (*praja*), pleasure (*rati*). In typically gandhian fashion, he takes it that ‘sex...is the least desirable aim of marriage’, and he adds: “Marriage was desired not so much for sex or for progeny as for obtaining a partner for the fulfilment of one’s religious duties’. It is questionable to interpret duty as excluding progeny, and there is a complete misunderstanding. As so often, this list indicates a hierarchised totality, in which what is classified as the lowest (pleasure) is both limited and consecrated by its association with the other superior intent. Clearly duty includes progeny, as progeny presupposes pleasure. Pleasure is not ‘less desirable’; it is desirable in its subordinate place. As interpreted by modern individualists, the datum is atomised, because they lose sight of the need felt by the authors of the ancient texts: to order everything rationally in relation to the supreme and permanent ends (Dumont 1966: 282).

adāc āra should imply good behaviour, but that would be limiting its influence. It works more in terms of a pattern of behaviour deemed as acceptable by the relevant peer group (this keeps changing and is dependent on the context, at the relevant time, as Menski (1997) stresses. It is therefore socially sanctioned by that peer group which is influential in the given context. Similarly, dowry it appears is a phenomenon which can easily be identified as an example of Mauss’s total social/cultural phenomenon; it encompasses economic, religious, social, jural and political aspects of culture. Further, dowry is seen to function as a system of affinal gifting and transaction not for material wealth and status implications alone, but to seek, to harbour and maintain a relationship through an intricate and long-term progression of symbolic and actual gift-giving. Therefore, dowry fits into the explanation of the gift-giving system identified as ‘pot latch’ (see Mauss, 1990; White, 1987: 552). Dowry, therefore as a total social phenomenon, has an inbuilt sanction to its adherence by the wider, social group. As we

have seen, neither the legal sanction of prison or punishment is strong enough to delimit its influence in the field of marriage. Perhaps not even to curb it.

Legal notions flow naturally from socially accepted norms of behaviour in all societies. Any legal evolution that does not work from within, working upward and outward from the society in which it aims to function cannot succeed, let alone be valid. Therefore the DPA has been repeatedly over the past six decades been seen as a disillusioned statute and virtually a dead letter of the law. Law cannot alone tackle an outgrowth of a social phenomenon. It must be understood and then carefully examined, as I am doing, in order to better deal with the fall out surrounding its practice.

2.6 Conclusion

In this chapter apart from the relevance of texts to tradition, the creation, discovery and academic analysis of the traditional cultural texts has been examined. This paves the way for an examination of first the relevance of these cultural texts as legal material, and eventually of the final layer of texts relevant to this thesis, modern legal texts. We have a virtual trifle of texts, layer upon layer, to understand and examine in order of importance and relevance to its influence on the acting out of the custom of dowry. The older texts may be seen as codified custom; Veda or *śr* may be cast in the same mould as the *s* *s*. Today in a world where these books are far less accessible, though even initially they may have been accessible to only a select few, the memorable guidance offered in the textual suggestions becomes a marker for society.

My argument here stresses that the old texts did not and cannot represent social tradition. I therefore reiterate that the earlier Indian textual tradition, from the Vedas onwards, is a product of customary beliefs codified in order to generate ideals to influence the harmony of society with the world it inhabits and is not in any way reflective of social reality. Similarly, the texts that we produce in contemporary times, as law books or statutes, are also products of the contemporary period and its belief of what is considered right behaviour. Seen in these terms both types of text, the cultural texts or the ancient writings and the legal texts, specifically modern legislation and case law on dowry, become only representative of the period that produces them, in their reflection of the ideals the relevant society aspires to. Therefore dowry exists, and appears to have been existing, as part of the Indian Hindu tradition as a major determinant in suitable

marriage selections and it continues to co-exist today with a law that did not dare ban it completely as a defiant socially sanctioned custom, because dowry negotiations and transfers occur in an area outside the reach of official law. Neither modern nor ancient texts have the power to determine the route of on-going custom. There is a certain degree of influence, but that is all. Dowry practices are a matter of social practice, of ‘living law’ or *sadācāra*, and neither the ancient texts nor the modern statutes have total control over that entity and the field it covers.

If we project a time in the future when modern Indian society disappeared, leaving only its Constitution and law books as clues to decode its belief-system, we would certainly believe that after considerable debate and struggle, dowry had been successfully outlawed. We are thus dealing with two layers of texts in this thesis: cultural and legal. What I am undertaking through this thesis, then, is a comparison of texts; the type of texts and the meanings ascribed to those texts, whether modern or ancient. For most people the concept of law and legality seems attached to books, but in practice and application it is based in tradition and living law, as will be described and further analysed in the following chapter. It seems like ideas filter into the public consciousness from written/remembered notions of what is right. And the concept becomes more important than the textually recorded notion. It seems to have worked like that when we consider how ancient texts sought to influence people’s practice, but could never really control it fully. Thus, today, the Constitution of India along with much well-intentioned legislation like the DPA rests on an un-dusted shelf, while life is lived out in accordance with a supposed customary harmony.

Therefore, to conclude this chapter on the relevance and importance of history and anthropology as disciplines to guide the methodological tone in this thesis, the following preliminary summary should suffice. Between the Marxist and Hindu Right readings of Indology there is a moderate path, evolved and tread by Inden (1976) some forty years before as a student at the University of Chicago, where a confluence between historical and ethnographic studies in the 1960s and 1970s had emerged in the South Asian Studies department. This confluence allowed and equipped Inden to approach the study of medieval India with a fresh perspective. Not in any way trying simply to marry methods from distinct sciences but to critically evaluate the application of each to the

field of Indian studies. As Daud Ali (2006: 2) notes, Inden's medieval research positioned him to examine the present using a more precise understanding of the "contours of change in social practises over time." This approach informs the entire present discussion, too.

Inden as a medievalist concentrated on the textual but his work remains influenced by the ethnographer's inspection of detail coupled with the historian's preoccupation with agency. This present study on dowry as symbolic of *sadācāra* is in no way an attempt to seek origins or roots. As Inden's research has highlighted, historians and anthropologists deal with the same problem, understanding 'the other'; in one case distanced by time and in the other by place. On a wider scale this analytical problem is shared by all social and human sciences, particularly against a colonial backdrop where society cannot be understood without access to cross-cultural examination. Inden criticised the social scientific traditions of the West which made caste central to decoding Indian civilisation as a whole. He instead highlighted the lordship theory which puts kingship theory and polity at the centre of Indian history. Inden's unpacking of the past figures closer to my own understanding of Indian history and culture as an insider.¹³⁹

Daud Ali's (2006: 15) summary suits the discussion here well as a concluding thought to the position presented above. The idea of a superseded and conquered traditional or ancient past as integral as it has been to most conceptions of modern society remains deeply problematic, not so much because traditional or ancient societies continue to haunt modern ones but because modern societies remain blind to the ways in which they themselves have reoccupied the functions and ideologies even the institutions of the past, which they may consider as remnants of a shadowy ancient past. Dowry as *sadācāra* is just such an institution. Bearing this in mind we may now continue to a discussion where the next phase of evidence contained in this older legal material is presented. The present chapter has shown that law flows from society, because custom is more important in understanding society than either text or law. Tradition shapes text, rather than text shaping tradition, in the negotiation of people's daily lives. That said, though, we need to examine now in more depth what the text actually said or maybe tried to say.

¹³⁹ See also Kaviraj (2010:12) and for segmentary state in colonial context (2010:41) and Chatterjee (1993: 14-35) for a discussion on the colonial state.

Chapter 3: Legal texts, religious rites and social traditions

“Law has scarcely reached the footing of custom; it is rather a habit.”

Sir Henry Sumner Maine 1861¹⁴⁰

This chapter strengthens the legal background for this thesis, which concentrates on a topic of religious studies that intersects with law. Further, it examines the backdrop against which the phenomenon of dowry works. The theoretical relevance of legal anthropology is considered here to place the discussion in a broader interdisciplinary academic context. The wider research question is whether one can root out a custom simply by applying the force of law through application of an authoritative text. This leads directly into the discussion on the nature of law in India, and an understanding of what is legal. Although it is a fact that Hindu law in a modern context has been codified and possibly reformed beyond recognition, the ‘legal postulates’ of Hindu law from the past remain. As Menski (2003: 266) continues to argue these postulates “could never have been legislated away. These are not rules that can be superseded by a statute or a case, they are cultural norms and values, which retain their vitality despite formal legal regulation, and which therefore only *appear* to have been abolished or reformed.” Bearing this in mind the object of the discussion here is to understand what these past ‘legal postulates’ comprise, and how they factor into the argument on attempting to legislate dowry.

Can dowry be seen as a jural or legal postulate (Chiba, 1982)?¹⁴¹ Within the wider context of this thesis, I examine the nature and relevance of legal anthropology as a valid and ongoing science. Further I examine the notion of legal pluralism, that there may be many forms of law working on social behaviour in society at any given time. The basic underlying notion of this approach is that law is just one feature in a social field, and law therefore takes many forms (Moore, 1978). I argue here that from the earliest verses what has been preserved is a complex combination of custom and idealisation in order to influence ‘right’ behaviour and to thereby become a norm, although it is imperative to

¹⁴⁰ From Henry Sumner Maine’s *Ancient Law; Its connection with early History of Society and Its relation to Modern Ideas* [1986] originally published 1861.

¹⁴¹ See section 3.1 below for a detailed discussion on Chiba’s notion of basic law and jural postulate. Further, an examination of what is considered a legal postulate.

consider that these norms still remain fluid and flexible. According to Hooker's (1975) analysis of the establishment of British Colonial Laws vis-à-vis the Panchayat tribunal systems, traditional norms were not displaced wholly by official ones. The positivist assumption that an authoritative body of law could perhaps be isolated from within this medley of beliefs led to a search for such a compilation of texts that might represent Hindu law in totality. Regarding the position of law and law making as represented by these ancient texts or *āstra* what do we find about dowry?

Beginning with the state of the modern, and an examination of various academic trends in section 3.1, the investigation moves to the ancient texts as possible legal precursors to modern law making. Finally the discussion in section 3.4 exposes the tensions between legal text and social custom versus custom and modern law in India, including the role of the state in formulating legal statute. To better inform this exposition it is necessary to briefly introduce the concept of 'living law', which Ehrlich (1936: 486-506) early in the twentieth century established as a concept prevalent in every human group.¹⁴² It signifies a tendency to include in law a certain type of conventional norm. Weber (1967: 233) characterised ideally "the particular principles underlying the religious ethics" that limit the structure and function of secular law. This inclusion and its negotiation is a gradual process, and India is an excellent example of a country where colonial legislation laid the roots for a fascinating specimen of 'living law'.¹⁴³

3.1 Legal anthropology and legal pluralism

Hindu law has long been battling with the social consequences of outlawing bigamy, child marriage, sati and dowry, in the latter case for over half a century. A clearer picture of the situation vis-à-vis dowry and its prohibition can only be understood in the light of what the fluid uncodified Hindu customary law considers right and proper, even if that goes against the legal mandate of the state.¹⁴⁴ This concept is not restricted to India; the

¹⁴² Ehrlich's original notion of law in action or "living law" was expounded in 1912. See also Nelken (1984: 157-174) a worthwhile comparison of Pound (1870-1964) and Ehrlich (1862-1922) in the institution of the sociology of law as an approach. More recently see Hertogh's reconsideration of Ehrlich in a modern context (2009).

¹⁴³ The concept of 'living law' as a determinant in the field of law generally and Hindu law specifically is tackled further in section 3.4 below.

¹⁴⁴ Ronald Inden's (2006: 129-175) interpretation of the pre-colonial state is not out of sync with the ideas of agency discussed further on in this chapter. Inden's work highlights his belief, cursorily, that caste in ancient and medieval India functioned as a model for the state. In fact he goes so far as to interpret caste as not merely a system of ascriptive kin-dictated groups articulated through the ideas of purity and pollution, or even a 'natural' division of labour anticipatory of a sort of civil society, as caste is often too

concept of “doing the right thing” exists in all human societies (Hartland, 1924; Malinowski, 1926). In fact, the force of doing the right thing, another phrase for the Sanskrit term *sadācāra*, seems to have an influence greater than that of legal provisions for society at ground level; we examine this here.

In contemporary India the modern state, as represented by the current governing political party, whichever that may be, turns to the past, glorifying selective symbols, like exorbitant rituals,¹⁴⁵ as suitable alternatives to the “corrupting” influences of the West. However it must be noted that this is not just a political construct, as there is much evidence that middle class identity is constructed by people themselves wanting to be seen as Hindu. That is, then, another form of *sadācāra*. It doesn’t quite matter what exactly one does, as long as one is seen to be doing these rituals. So one performs rituals and makes a show of things, like preoccupations with *vaastu śāś ra* in recent times. These sorts of concerns (a need to the link with Nature) and more commonly the Arya Samaj’s version of a modern Homa ceremony for most significant occasions like house warmings, or naming ceremonies, or the familiar *satyanarayan* pujas demonstrates this need to be seen to be in alliance with the rest of ‘good’ society. This is very clear from Saavala (2010: 10-14). This element of the present makes it important to note the influence and historical relevance of the ongoing process of Westernisation and consumerism as one of the determinants of the current shape of dowry.¹⁴⁶ In terms of Westernization it is

simply explained away. Instead Inden argues for an interpretation of caste as a scale of inter-related, self-monitoring agencies, which were integral to the early formation and functioning of pre-colonial political orders. Ronald Inden’s position is in direct contrast to that of scholars like Louis Dumont (1970) and even Heesterman (1985: 10). Inden’s critique of their scholarship in this area gave rise to the notion that kingship and polity must appear centre-stage in any meaningful analysis of caste. See also Declan Quigley’s (1996) excellent excursus on a similar theory of political stratification in terms of interpreting caste as a different category. Also see Menski’s (2003: 266-267) examination of self-regulatory roles as self-controlled order or syndrome in modern society. Further, most recently Kaviraj’s (2010: 12, 41) examination of the relevance of self-regulatory roles in low-grade governance is a value worth noting in this context.

¹⁴⁵ In particular religious processions, or *rathayatras*, chariot-processions literally; Ali (2006: 9) notes “Processions, deemed a potential public-order problem in contemporary India, a benighted vestige from a frightening medieval past, form an interesting case in point. When we look closely at what medieval rulers and aristocrats thought they were doing in holding processions, a somewhat different picture emerges. They conceived of them as a means of ordering their realms under the practises of an immanent and participatory institution of lordship”. The B P government during its reign (1998-2004) attempted to institute a similarly stilted ideology by harking back to processions of the past. See for instance a continuing strain of this ideology at work in twenty-first century India: www.business-standard.com/india/...BJP...rath-yatra.../387457/ “B P to start *rath-yatra* to press for *vidarbha*” 4th March 2010. Also see how these processions are being blamed for home grown terrorism and communal violence “B P *rath-yatra* root cause of terrorism in India” October 2008 *Indian Express.com*.

¹⁴⁶ See Khilnani (1997: 197-198) for an analysis on the impact of western political ideas on India. See also more recently Chatterjee (2010), in particular Nivedita Menon’s incisive introduction for similar ideas.

important to acknowledge the process by which India as a national entity comes to grips with her own past.

In the past the global mode of integration was led by administrative control by the older European powers, but this gets inverted in their post-War agenda. The older model rested on the cultural integration and assimilation of the colonies, previous to them taking on their own identity as “new nations”, through the agency of the ‘elites’ of the third world. These elite were identified, even educated and through an engendered support of their Westernised ideals, were encouraged to take on the governance of their own countries. The model now becomes the regional one (Inden, 2006: 62-63). While the development of shared civic (Western) values during the imperialist period was almost intentionally delayed in its onset, perhaps even prevented, in the creation of the “new nations” it occupies centre stage. Geertz (1963: 140) in fact identified, particularly the Indian National Congress party as the elite integrating mechanism in India. According to him this political party, “tended to become an ethnically neutral, resolutely modernist, somewhat cosmopolitan force on the national level at the same time that it has built up a multiplicity of separate, and to a large extent independent, parochial party machines to secure its power on the local level”. Citing Shil’s study on India’s intellectual elite Geertz (1963: 140) further notes Nehru’s contribution as an exemplification of the modern, he casts the other regional heads of state as “deliberately manipulative”. In fact in Geertz’s estimation these other “regional bosses” of the Indian National Congress he interprets as exerting power to manipulate what he calls “primordial” ties of the “local realities of language, caste, culture, and religion to keep the party dominant”. This view ably summarises the efforts of the Indian government through state and national government, from the earliest inception of India as a nation, through legal codification of laws and statutes, like the DPA, and other regulations, to cast India into the future.

By briefly examining the dynamic between legal text and social custom it is possible to unearth the loopholes projected in the wording of the statute, the DPA of 1961.¹⁴⁷ This will help to further analyse the inefficacy of a ban that actually allows room for the custom to continue a cursory examination of the DPA informs the wider argument: can a text be used to root out a custom?

¹⁴⁷ A detailed examination of this statute is undertaken in chapter 6, specifically in section 6.1 below.

As stated at the outset this thesis is an inter-disciplinary study charting legal concepts embedded in social behaviour, using sacerdotal literature employing anthropological and historical research methods. The methodological approach here must account for legal pluralism, however briefly, as Indian legal systems past and present display classic signs of two or more laws interacting.¹⁴⁸ Since the primary source materials employed here are ancient Indian texts, the application of textual and legal anthropology remains important, as discussed in chapters 1 and 2. It is crucial to consider how law evolves to claim to assume control over society. For instance the nineteenth century tussle between positivist and anti-positivist views in the evolution of English civil law is not out of sync with what continues at ground level in India today.

As the title of this thesis suggests, the idea of ‘tradition’ is crucial to any understanding of legal concepts. This has been widely recognised in the past, but fell out of academic concern for almost three centuries in western scholarship in particular. Tradition has again received renewed attention recently. In legal theorising, it appears to manifest itself as a fresh emphasis on the critical role of social forces in legal analysis (Menski, 2000). This seems also to be brought on by a set of internal circumstances being examined through an international social science survey of western society in the early 1990s (Inglehart, 1995: 47).¹⁴⁹ Notably, the survey highlighted a “post-modern shift” over the last twenty-five years or so of the twentieth century, moving gradually from “rational-legal authority” toward “self-expression”. To situate the argument in the wider concerns of universal ideas of law making and legal sources meaningfully it would be negligent to not address H. Patrick Glenn’s (2004) perspectives on the subject. According to Patrick Glenn (2004: xxiv) both political and social theory have begun to recognise, once more, the validity of ‘tradition’ as a possible means of “maintaining social coherence”. This notion underlies the discussion here whether it concerns modern or ancient law making agenda.

It is hard to ascertain the role of law, as we cast it today. What role does society want this aspect of human behaviour to perform?¹⁵⁰ In a current scenario where global societies are more in conflict than in conversation, ideas like Fuentes (1992: 409) “we

¹⁴⁸ Most legal systems display this intersection of two or more laws; it is therefore a feature not unique to Indian legal systems (Chiba, 1986; Menski, 2000 and 2002).

¹⁴⁹ This is a report on a 43 nation World Values Survey, carried out in 1990-1.

¹⁵⁰ Also see Fuentes (1992: 408) on a wider argument about why co-operation among nations calls for readdressing the ideas of what is common, rather than what is divergent.

have too many common problems which demand co-operation and understanding in a new world context, to clash as much we do”, are crucial. In this regard the wider need for an understanding of how law and traditio may be linked, or even perhaps in so many ways be the same, as in terms of *dharma* translated as tradition. In this regard, Patrick Glenn (2004: xxv) suggests that tradition seems the “most fruitful field” to meaningfully address this question, and similar concerns regarding sources of law. In Glenn’s view tradition is far more influential than has been thought in the recent past, since it

“...does not appear to be a product of any particular civilization, yet appears present, explicitly or implicitly, as a formative influence in the law of all of them (including, and to the present day, that of the west). The same cannot be said of the notion of a legal system, the history of which is clearly and exclusively associated with western (and derived Soviet) legal theory, and which now may be thought of as part of the problem rather than the solution.”

Here we have the ideas of a generation being called into question regarding the importance, even centrality of ‘tradition’ as a valid source, an formative influence of legal concepts from ancient to modern society, including all forms of society in between. It follows that we further understand how ancient law was perceived when law making began to take shape in its current form in the west, as this had a direct bearing to how legal precepts were set in the former colony of India. In particular we must briefly address the formative influences of Austin, Bentham and mainly Maine, as this has been formative in positivist law making agendas in India for over four centuries.¹⁵¹

In his opening to *Ancient Law*, Sir Henry Sumner Maine draws the fascinating geological analogy that “[i]f by any means we can determine the early forms of jural conceptions they will be invaluable to us. These rudimentary¹⁵² ideas are to the jurist what the primary crusts of the earth are to the geologist. They contain potentially, all the forms in which law has subsequently exhibited itself” (1986: 2-3). In this enlightening

¹⁵¹ Famously of course a corner stone of Indian Criminal Law the Indian Penal Code 1860 (IPC), was drafted by Macaulay and remains in effect, with numerous amendments, to date. The IPC was later enacted in other British colonies like Singapore, Sri Lanka and Nigeria among others. Worth noting is the positivist intent of this legislation to follow the progressive model of British law and history, considered widely superior to local peculiarities. This view is well attested in his writings from the period, see Macaulay (1935).

¹⁵² The suggestion that older societies by mere fact of having gone before had “rudimentary” ideas rather than full-blown ones seems reflective of the Victorian superiority so common at the time. Maine was not, from contemporary reports, given to this superiority at all. Rather he seems to have gone to some length to establish a counter-point to the ideas of Jeremy Bentham and John Austin who held that ‘proper’ law flowed primarily from positivist precepts.

chapter, forward and supremely clear for the time, Maine examines ancient codes in other societies and lays out his ideology as anti-positivist. In direct contrast with, and challenging the dominant views of the day propagated by Jeremy Bentham and his follower John Austin, Maine discusses the dangers of resolving every law into a “*command* of the lawgiver, an *obligation* imposed thereby on the citizen, and a *sanction* threatened in the event of disobedience; and it is further predicated of the *command*, which is the first element in a law, that it must prescribe not a single act, but a series, or number of acts of the same class or kind” (1986: 7).

Maine further suggests that this sort of “separation of ingredients” is reflective of mature jurisprudence, which may further be seen to apply to all laws in form from all epochs. Maine uses his argument well to set up his belief that the further one researched and penetrated into the “primitive” history of thought the further one would move from a notion of law as positivist. To him, then, modern law is a positivist construct. He suggests, and I concur, that “in the infancy of mankind, no sort of legislature, not even a distinct author of law, is contemplated or conceived of. Law has scarcely reached the footing of custom; it is rather a habit”. His thoughts bear resemblance to the ancient Indian scenario we have seen in the previous chapter during which much of the early material was composed and compiled. Bearing this in mind we may proceed with the discussion focussing on legal anthropology and legal pluralism.

Why is law seen as central to human society? David Hume’s explanation is more psychological than philosophical,¹⁵³ as summarised and cited by Popper (2002: 56-57). Hume talks about the fact that we as humans “believe” in laws; the operative term being the fact of “belief” it is worthwhile to understand what he means as it coincides with the assertions made in this thesis. According to Hume’s theory this belief stems from a habit. This is not unlike Maine’s (1861) assertion that law emerges and emerged, almost habitually in human society, through human society. Hume surmises about human law that “like other habits *our habit of believing in laws is the product of frequent repetition* – that of the repeated observation that things of a certain kind are constantly conjoined with things of another kind” [emphasis added] (Popper, 2002: 56). An important clarification to make here is that there is no assumption that it is this repetition of a certain behaviour which caused that behaviour, in this case law, to originate. However what Popper says

¹⁵³ See Hume’s *Treatise of Human Nature* Book I, Part III, sec. vi & xii, as cited by Popper (2002: 57).

about the nature of a custom being enjoined through repetition and his allegory of the difficult passage of piano scales bears repetition itself:

“(a) The typical result of repetition –say, of repeating a difficult passage on the piano—is that movements which at first needed attention are in the end executed without attention. We might say that the process becomes radically abbreviated, and ceases to be conscious: it becomes automatized, ‘physiological’ [sic.]. Such a development, far from creating a conscious expectation of law-like succession, or a belief in a law, may on the contrary begin with a conscious belief and destroy it by making it superfluous...On the other hand, even if it is true that repetition may create unconscious expectations, these become conscious only if something goes wrong...”

If we consider Popper’s (2002: 56-57) summary of legal concepts being rooted in repetition it becomes clearer what the intent of the DPA was, and in the ancient context, what the composers/compiler of the older textual material that appears of a juridical nature to the modern eye, were intent on creating as well. In this manner, we have in academia an attempt to understand the human condition that grapples with the need to create order, as it perceives in nature and apply that to human nature. From this it becomes possible to extend our discussion to the nature of customs or even habits, and what forms in society normative expectation and behaviour surrounding marriage making and dowry. To be clear, habits do not only emerge as a result of repetition, however they are influenced by repetitious behaviour. According to Popper (2002: 57), “they may deserve to be called ‘habits’ or ‘customs’ only after repetition has played its typical part under (a) [quoted above] but we must not say that the practices in question *originated* as a result of many repetitions” [emphasis original]. Applied to law we may further seek to associate and assess early processes of law making, specifically in the Indian context as habit-forming behaviour. This of course lends itself well to the nature of language in the Vedic period. May we however further extend this understanding to the behaviour surrounding dowry exchange and demand? Is it indeed a habit? An analysis of the systems of law that operate in the Indian context, from the early times, will aid an understanding of this question.

As Hooker (1975: 8-9) pointed out jurists tend to look for analytical categories founded in jurisprudence, while the sociologist or anthropologist grapples with the problem of classifying legal systems in terms of the kinds of societies they are found in. Traditionally, history concerned itself with the study of past societies while sociology and

ethnology have concentrated on those of the present; respectively treating traditional and modern societies. Although these partitions continue to exist, they are gradually becoming less exclusive. Further, in this respect, too, interdisciplinarity is strengthened and pluralism becomes more explicitly recognised as a ubiquitous phenomenon (Melissaris, 2009)

According to Rouland (1994:1) legal anthropology involves the study of the discourse, practices, values and beliefs that all societies consider “essential to their operation and reproduction”. One of the main objectives of anthropology, the study of humankind in all its diversity throughout time and space in all societies, must be kept in mind here. There are 10,000 distinct known legal systems, even if we gather precise information on a few hundred of these, the overall picture is that of diversity. “Humankind has celebrated difference to forge its own identity” (Norbert, 1994: 1), we exist only in relation to others. Confronted with such an explosion of social and legal systems anthropology develops a system of comparative classification. The ‘culturalists’ highlight the specific nature of a society’s value system; the structuralists try to sift an underlying order within cultural variability.

My thesis constructs an argument by combining the approaches of legal and anthropological study in the social or textual field and examines the evidence in this methodological light. Koch (1969: 16) adequately described the methodology which is the starting point here:

“In order to render a valid report on the law of a people, two separate but related tasks have to be worked out. One is to ascertain the cognitive categories by which the people whose legal system is to be studied structure their ideas of wrongs and their ideas of forms and procedures of redress to be taken. The other task requires a translation of these categories into our medium of communication. This is an exceedingly difficult job, for it demands both that the essential features of the native system not be distorted and that they be cast into a scientific terminology which makes cross-cultural comparisons possible.”

The challenge, then, would appear to be to represent ancient perceptions of the need for giving some kind of ‘dowry’ in the language of today’s scholarship without running into the shooting line of human rights activism that sees all forms of dowry as evidence of the systematic suppression of women’s rights. More specifically as my argument characterises it, as ‘bad’ dowry, as already discussed in chapter 1. Matters may not be as

simple as gender-activist ideology suggests, life is more complex, law is more plural than was assumed for a long time.

Recent advances in research on legal pluralism have reinforced such realisations. The origin of 'legal pluralism' becomes apparent when other systems of law are found to work in tandem with state law, "whether in harmony or in conflict" (Chiba, 1989: 1-2); this is typically true of non-western society although it is found in western society as well.¹⁵⁴ The leading proponent of this approach, the Japanese jurist, Masaji Chiba, discusses the main problem of previous legal analysis, a view crucial to note here as it helps define the particularistic academic thrust of my thesis. Chiba (1986: 1) keenly observes that historically law has been studied in exclusion from its social environment:

There has been a long-established belief among both specialists and laymen that law is a special mechanism for social control isolated from other social mechanisms and, for this reason, that the scientific study of law should be confined to the special capacity of traditional, model jurisprudence. But since the beginning of the twentieth century this common belief has been challenged by new ideas concerning both the objectives and methods of the study of law. As a result it has become more evident that law is so inseparably rooted in society as to be approachable by sociological methods. Furthermore, it has also become accepted that law must be recognised as an aspect of the total culture of a people, characterized by the psychological and ideational features of each fostering people, and may therefore be approached by anthropological methods.

The basic underlying notion of this approach, that law is just one feature in a social field, and law therefore takes many forms, was previously expounded by American legal anthropologist Sally Falk Moore (1978: 214), whose field-based theoretical study is a major source for several writers on legal pluralism. An important article "Law and anthropology"¹⁵⁵ highlights the inter-textuality of the two, arguing that "every good ethnographic description contains a great deal of legal material, whether or not it is explicitly called 'law'...". This is the starting point, then, for a social understanding of the literature of ancient India and its anthropological relevance to legal analysis today and it highlights the particular approach employed in my thesis.

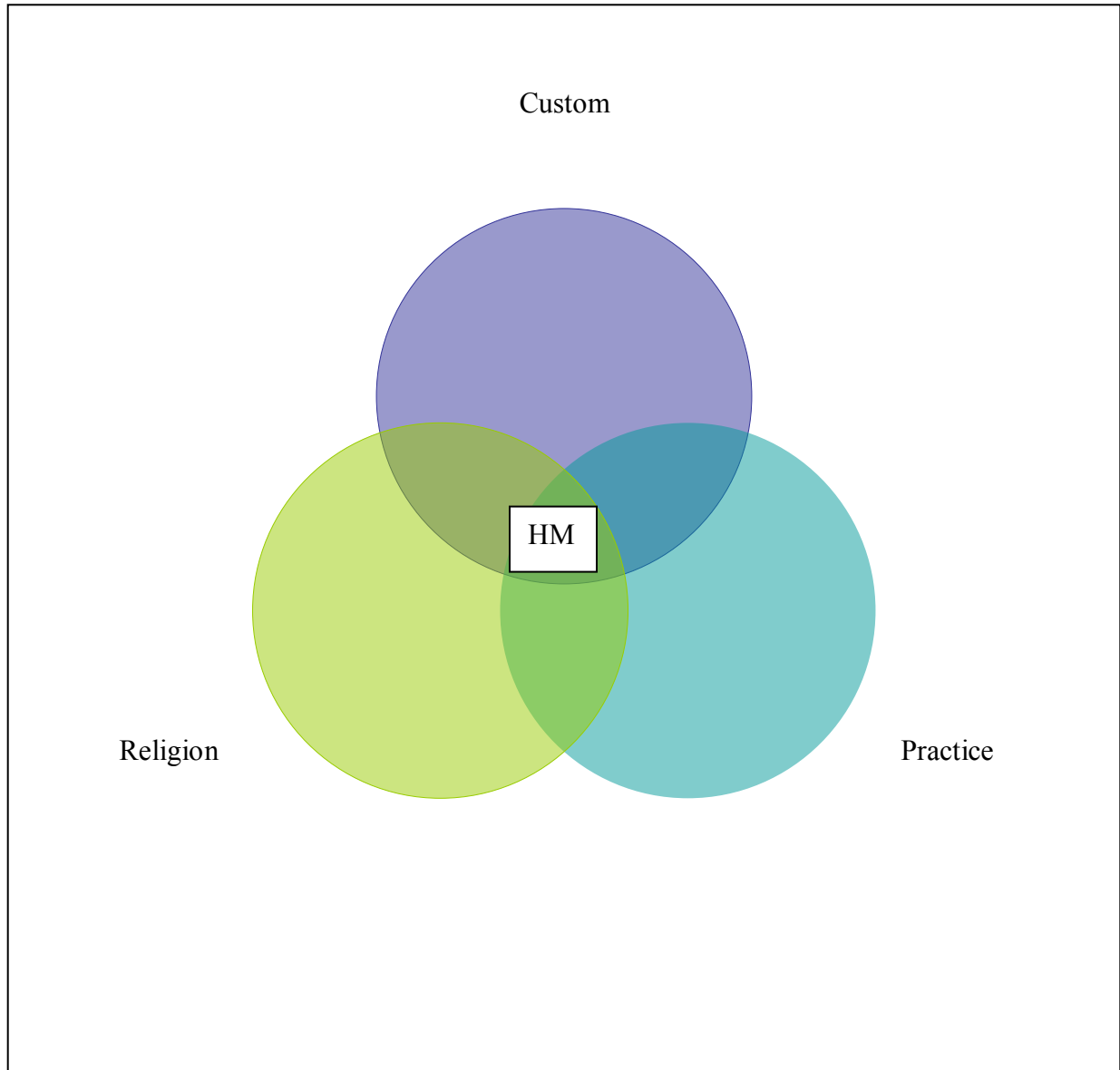
This means that the ancient Indian texts are not legal documents, but at the same time, as we saw in chapter 2, they are not merely 'religious'. They are themselves reflections of the internal plurality of 'living law'. Using Derrett's (1976: 47) observation for a much needed collaboration between anthropologists and lawyers my thesis

¹⁵⁴ For a detailed assessment of the emergence and importance of legal pluralism see Menski, (2000: 69-73) and also originally Chiba, (1986: 1-5).

¹⁵⁵ Originally published in 1970, it appears in reprint form in Moore (1978: 214-256).

highlights a major problem faced by research attempting to employ both anthropological and legal data; the chasm between the people's and a lawyer's conception of law.¹⁵⁶

Fig. 4 The Anthropological Field of Law showing the three influences on Hindu Marriage



Key

HM=Hindu marriage

¹⁵⁶ See also Holden (2003, 33-39) for an enlightening discussion on methodological issues when tackling these very research issues in fieldwork application.

3.2 The ancient Indian texts as legal material

From the discussion in the last chapter (2.1 above) examining the nature and character of the texts in question the following questions were addressed: What do these texts represent, social reality or ideals, or an admixture? Do they encapsulate custom? I argued in chapter 2, and reiterate here, that from the earliest verses what has been preserved in textual form is a complex combination of custom and idealisation in order to influence 'right' behaviour and to thereby become a norm, although it is imperative to consider that these norms still remain fluid and flexible. Pluralism, in other words, remains a fact even at that early time. Similarly, to take the discourse forward, the relevance of law in the Indian context, traditional and modern, as a highly fluid entity, must be highlighted.

Menski (2000: 15-29, 52) observes that there is no universally accepted definition for law to date, despite recent research concerned with a 'deeper study' into the nature of law. Notwithstanding this lack of parity the word itself immediately sparks diverse assumptions: "The mere word 'law' has an honorific ring" (Harris, 1980: 128). Menski (2000: 52) on the other hand further observes that "all legal systems fail to provide justice, assuming that this was their main aim, in the first place, for doubts must remain even about that. For many people, thus, 'law' is immediately associated with abuse of power". This, interestingly, is one of the primary apprehensions of litigants in India (and elsewhere) in accessing law; they are unconvinced that law means justice. Menski (2003: 585-590) cautions that a critical reassessment of the modernist representations of Hindu law points to "deep-seated deficiencies in scholarly understanding of law as a phenomenon". This assertion is kept in mind in the following discussion.

Traditional writing on the nature of Hindu law in pre-British India is clear on one point: custom and its complex nature. Thus we read that "the body of law applicable to those persons who are 'Hindus' was never solely the law as set down in the texts but was and is made up of a mixture of rules which include custom" (Hooker, 1975: 58). Also important to note here is the reading of these texts. Despite recognition that custom had a crucial role in ascertaining law, or the right thing to do, there was a consistently perceived need to 'codify' custom by the British administrators. Maybe this was because of the presumption that in the history of English law, the older 'common law' as a custom-based phenomenon was gradually codified by judicial interventions. According to Hooker's analysis of the establishment of British Colonial Laws vis-à-vis the Panchayat tribunal systems, traditional norms were not displaced wholly by official ones (Kaviraj,

2010: 12). On the contrary he asserts that traditional attitudes were strengthened. Though they might not have continued to effectively govern areas like creation of status or the transfer of property, they might be “even more pervasive than the orders of the courts” (Hooker, 1975: 65). What Hooker does not elaborate is the emerging distinction between ‘official customary law’ and the living customary law, a distinction that is now made in Southern African legal systems, in particular (see Hinz and Mapaire, 2010) and seems not yet developed with regard to South Asian legal systems, and will therefore require much work and specifically tailored research agendas.

In Emile Durkheim’s (1979: 24) view “the most visible symbol of social solidarity is law”. In his analysis of the nature and importance of a systematic division of labour in “great political societies”, Durkheim (1979: 23) discusses how these societies are unable to sustain their equilibrium with the specialisation called for in an organised division of labour. In the Indian context if we view caste in the sense of a cursory division of labour for the purpose of a semiotic analysis, this Durkheimian model makes sense. See for instance the diagrammatic representation of the macrocosmic and microcosmic solidarity oriented societal model in Fig 5.

In terms of religion and the notion of moral rules, the more Durkheim investigated the nature of religion he found the need to incorporate a vocabulary of voluntaristic love, respect and even desire, as opposed to that of fear, obligation and coercion in terms of religion applying to an individual’s life (Cosman, 2001: xxvii). In these terms Durkheim complained that other philosophers and sociologists, like Immanuel Kant,¹⁵⁷ inadequately appreciated the moral ends of religious force in individual behaviour. For instance, doubting that “the imperative was, in fact the religious element in morality” created an incomplete understanding of obligation in human society with regard to compelling societal behaviours. Durkheim (1974: 70) argued that “the more sacred a moral rule becomes, the more the element of obligation tends to recede”.¹⁵⁸ Durkheim maintained that progress toward a solution is possible by studying religion. Some might ask, what solution to an epistemological problem could possibly arise out of studying “that messy cultural” stuff; religion (Cosman, 2001: xxv)? Durkheim’s response was that reason itself

¹⁵⁷ German philosopher, Immanuel Kant [apriorism] (1724-1804), notably influential among other thinkers from the Enlightenment period like David Hume [empiricism], in the classic sequence of the theory of knowledge, and also remains seminal in the fields of philosophy and its effects on modern sociological thought. His *Critique of Pure Reason* (1787) presents an epistemological investigation into the limitations and the structure of reason itself. See Kant, (1998).

¹⁵⁸ However, Durkheim does not reduce religion as a category to be equal to morality (Cosman, 2001: xviii).

is shaped by the unkempt socio-historical institutions, and religion has been a principal one.

Religion emerges from the “cauldron of collective effervescence” and that religion is itself the defining symbol of a group’s collective life. As Durkheim put it, if the totem is at once the symbol of god and of the society, are the god and society “not one and the same” (2001: 14). Max Muller believed that religion is born of the human imagination in confrontation with natural phenomenon like the wind, the star, lightning and rain. Personal agency was ascribed to the natural occurrences when early humans held captive by their language took their own metaphoric descriptions of natural events quite literally. E. B. Tylor, in contrast, held that religion was caused by the human confrontation with dreaming and death. Durkheim (2001) argued that religion is a form of authority and custom that powerfully links the individual to society. His belief was that collective consciousness is a product of religious behaviour, and vice versa, through his study of the Australian Aborigines, he hoped to forward a view for wider society of the very nature of religious experience.

Interestingly, Durkheim practised what may be called “a sociologist hermeneutics of suspicion”, or the belief that people cannot adequately account for their beliefs and actions because most individuals remain unaware of the nature and strength of the social webs that surround them (Cosman, 2001: xviii). Therefore, as in the case of those who practise ‘bad’ dowry, people’s collective experience is not imaginary in religious terms, but remains a hidden source which is the collective human forces of which the actors are unaware, as Durkheim (1995: 88) surmised. In *The Division of Labour* Durkheim (1979: 120-122) for the first time uses a religious idiom to identify a type of individualism; here he claimed that the modern idea of an individual –a being with dignity and rights— became “the object of a sort of religion...a common faith”. He further clarifies however that modern individualism, as opposed to traditional individualism more in harmony with a common religious ideal, cannot or “does not constitute a truly social link”. Cosman (2001: xiii) highlights the fact that Durkheim characterises modern individualism as drawing strength from society in that “it is not society that binds us: it is to ourselves [as individuals]” [insertion original]. However in a few years he recanted this belief and came to identify that many modern social institutions displayed characteristics of

religion, in that they were markers of collective beliefs, values, and practices that profoundly shape and influence moral identities.¹⁵⁹

Earlier Durkheim had identified religion with a moral solidarity found only in traditional society; he later found there to be a continuity between modern and traditional societies. However, modern society with its common faith,¹⁶⁰ characterised by its principal dogmas exhibited an entirely different religious nature to that of traditional societies (Cosman, 2001: xiv). This corresponding evolution of ideals, underpinned by a belief system which upheld moral solidarity in terms of the well-being of the larger group coincides neatly with the *tic* worldview, where cosmic and microcosmic ideologies intersect. The idea is that the microcosmic world of humans through a harmonic and superior linking with the macrocosmic world of the divine, underpins the well-being, and prosperous follow through of the material benefits and future progress of the microcosmic world (Miller, 1985: 38).

In analysing the backdrop for the “ceremonial drama of marriage” (Menski, 1984: 3) we must bear in mind that Hindu Law, as a conceptual construct, has continually redefined itself, a redefinition dependant on the situational context of the given historical period; “[e]ach period has its own characteristics and its own *dharma*” (Baxi, 1986a: 221). One may read into this the validity of legal pluralism (Griffith, 1986: 4), which is essential to Hindu legal philosophy, wherein uniformity of rules might be perceived as a “manifestation of injustice” (Menski, 1997: 4). This precept is essential to an understanding of Hindu concepts, including the apparently finite realm of law. The inherently contradictory nature of the texts, outlined below, bear testimony to this. In this regard the illustration above in Fig. 5 shows the negotiation between custom, and law in the religiously governed performance of marriage related rituals.

This conceptualization of Order or Law in the early Vedic context appears to sit well, and fits into the framework of what scholars have unearthed as the principle of

¹⁵⁹ As cited by Cosman, (2001: xiv) Emile Durkheim, (1899) ‘De la definition des phenomenes religieux’, *Ann soc o o q* 2, pp. 20.

¹⁶⁰ Durkheim was influenced in his approach to religion as a reflection of moral solidarity through an alliance and association with the British anthropologist William Robertson Smith, (1894: 264-265). This was particularly the case after the 1898 Dreyfus affair, where many believed that the future of France’s democracy depended on the acquittal of Captain Dreyfus, a Jewish French officer. For further detail see (Cosman, 2001 : xiv-xvii) Smith helped Durkheim formulate his new understanding of modern liberal society, and thereby influenced his initial casting of traditional societies as upholding moral solidarity through an adherence to religion.

ta.¹⁶¹ This early macrocosmic understanding of Order gave way to what might be called its microcosmic dimension: order as dharma.¹⁶² *Dharma* envisions itself as the core pivotal concept of Hinduism, and therefore of Hindu law. This vision of an ordered universe, where each participant plays a given harmonious role, bears legal implications. In the following section these fundamental concepts are briefly examined to see how they provide the canvas for marriage and dowry. By briefly examining the canvas of *ta* and *dharma* we are able to access the early worldviews with regard to the manifestations of the earliest notions of law. This is necessary before we begin to unpack what the role of tradition is in the formation and shape of texts.

According to Miller (1985) *ta*, the earliest notion of a manifest natural Order, finds mention in various early Vedic verses. Translations describe it as an all-encompassing cosmic Order or Truth. A minimalist definition indicates: “a complex system of unknown origins, with underlying rules that are not known to man” (Menski, 1997: 7). Miller’s (1985) work on this speculative envisioning may offer clues to what would otherwise seem a baffling societal order. Using her lens we peer into this crucial aspect of the Vedic past to observe how this distant society functioned, specifically in ascertaining order as a reflection of Order. The understanding of this early society was influenced by a need to connect with the cosmic harmony represented in the diagrammatic representation of Fig. 3 above, which highlights the position of the individual in relation to the rest of the cosmic universe. The individual is at the centre, and yet rather than influencing the order, he/ she is influenced by it as much.

Vedic society, like most pre-literate animistic cultures observed the unfolding regularities and disasters of nature and developed theories seeking to explain these, theories which, based on vast amounts of literary evidence, we conclude seek to comprehend the maintenance of an invisible yet manifest Order/ order that they believed applied to gods and mortals alike. Therefore *ta* looked at from the physical, ethico-social, ritualistic, or religious points of view, indicates “...reality, law, order, norm, basic structure of the universe, universal harmony...” (Miller, 1985: 38) becomes critical to our discussion of a Hindu mindset in understanding law is this conceptual development of a Hindu ideal representing cosmic harmony. Miller’s discussion seeks to

¹⁶¹ See in detail Miller (1985)

¹⁶² ‘Order’ in this discussion denotes the macrocosmic principle of *c* awareness; ‘order’ one of microcosmic dharmic preoccupation in this thesis. Similarly, ‘Law’ signifies the natural order, while ‘law’ the microcosmic man-made aspect of this for our present purpose.

explain this, when she calls *ta* the “blue-print” on the strength of which, “the unmanifest becomes manifest ...the transcendent the actual, chaos cosmos” (1985: 90). While this first inkling of Order provides the soil to set the roots for the externalisation of *dharma* as order/law, *ta* itself diminishes within the textual tradition. Thus, as implied in numerous verses, being able to connect in accord with the universe becomes an underlying axiomatic concern. This textual evidence formed the basis for observations seeking to define *ta*. Renou’s definition, in terms of the interaction between the microcosm or the human, with the macrocosm, or the cosmos, seems most suited to our present purpose:

“*ta*, which for convenience [sic.] sake can be translated by order (cosmic order and moral order) or by Law, is, more precisely, the result of correlations, the product of adaptation, of the ‘fitting together’ between the microcosm and macrocosm” [emphasis added]¹⁶³

Awareness of *rta*, conscious or not, therefore requires an effort to harmonise both individual and social expectations, displaying a concern for the greater common good,¹⁶⁴ balanced with the manifest cosmic Order; defining, in a broad sense, what is permissible and what prohibited, while seeking to maintain the fine balance between ‘right’¹⁶⁵ and wrong. The human being’s foremost duty was to play out his assumed role in society, which involved invoking the benevolence of various guardians of *ta* through elaborate ritual sacrifices. We observe here a need to link with the regularities of this Order, lucidly expressed in the form of this intricate ritual science. These rituals are essential to understand the emergent worldview, and of the consequent legal system that this society founded for itself; a society too distant in time to otherwise accurately decipher. One may conclude first that religion, as we understand these rituals to represent forms the foundation for the growth of this unique ordering of society. Secondly it supplies an understanding of the order by which this variegated society continues to live. Therefore, *ta* understood in these terms, provides the cosmic scaffolding upon which the later concept of *dharma* develops.

The first mention of the root *dhr* (to uphold, maintain or sustain) refers to maintaining the life-sustaining openings, which may influence the harmony of the

¹⁶³ As cited by Miller (1985: 39)

¹⁶⁴ See also, “The Greater Common Good” (Roy, 1999) an article discussing contemporary perceptions of “common good”, or what here we discuss as *sadācāra*, or model or appropriate behaviour.

¹⁶⁵ Most of these expectations were however contextually interpreted. The word “right” in this essay when highlighted in this manner signifies the contextual concept of rightness within the particular historic period under survey as these notions change and evolve different dimensions over time.

universe (Halbfass, 1992: 14). With time this concept of dharma takes on definite microcosmic tones (Kane, 1968: 261). Like *ta*, *dharma* develops out of macrocosmic dimensions but unlike *ta*, *dharma* goes on to assume microcosmic proportions. Kane observes this change in the “active” participation of individuals within society to uphold and maintain, what is ‘right’. This develops a dimension of influencing the extant Order, which persists to this day. The Hindu concept of law, or justice, has therefore been from its beginnings based on a continuous dialectic. A process of negotiation which, one speculates has been inscribed to a great degree.¹⁶⁶ Further, this represents an attempt to uphold what is good in order to own it, from a need not only to harmonise with but maintain the invisible world of *ta* through an adherence to *dharma*. This represents what is perceived as the right and proper action to perform, and thus the ‘right’ and proper role to play. Marriage and practices that support this institution are important reflections of these expectations inherent in the satellite of society and the larger scheme of the universe. See the diagrammatic representation of these ideals in terms of linking with the universe through right ritual, Fig. 6, ambitiously situating dowry in the context of an ideal model marriage, as the centre of the *dharmic* universe.

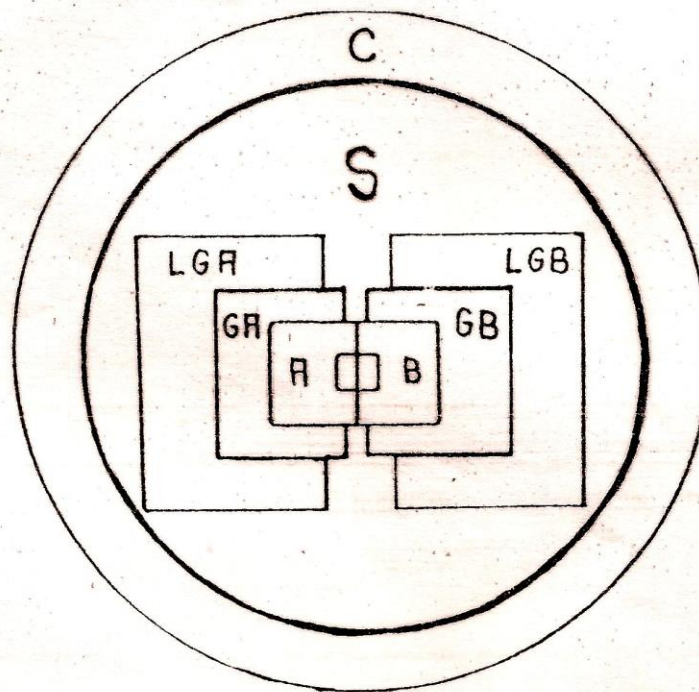
The purpose and expectations in Hindu marriage seem clearly linked to this underlying notion of inter-linkage with the wider, cosmic, especially macrocosmic reality for Vedic India. Inter-linkage with *ta* through *dharma* was thus held supreme in early Vedic society, as we have discussed in terms of ritual superiority and purity through adherence to complete and auspicious sacrificial rites. Numerous elaborate creation myths assert this, attaching importance to issues related to birth and marriage hinged on acts of creation. Firstly, it is essential to keep in mind this worldview to understand this argument in relation to Vedic society. Secondly, notions of marriage and its purpose have not, despite an apparently unchanging linguistic code, been passed down age after age unaltered (Thapar, 1987: 3). Though considered a part of legal procedure, marriage has been defined within the traditional cultural texts. The domestic ritual manuals known as the *rhyasū ras*, texts describing, domestic sacrificial rituals particularly the *sareera samskaras*, or life defining rituals. Marriage, considered a *samskara* above all

about, and does not represent unchanging concept of right. Specifically, as emphasized previously, given the fluidity of all terms in the Hindu context, no concept can truly be defined in watertight terms.

¹⁶⁶ This is witnessed in the dramatic portrayals of role and character conflict in the epics, roles representing ideals upheld in Hindu society to this day as binding to dharma. See Chapter 5 below for examples of this. This inscription is discussed in section as the concept of atmanatusti.

samskaras, heads this list (Derrett, 1957: 86). That the *rhyasūra* begin with the marriage rites confirms that “[i]t is the central Hindu institution”, “only a married man accompanied by his wife is the complete persona religiosa entitled to perform the principal acts of sacrifice and procreation” (Olivelle, 1987: 387).

Fig. 5 Marriage within the Cosmic circle



Key:

- A - the husband or groom
- B - the wife or bride
- GA - the husband's group or family
- GB - the wife's group or family
- LGA - the husband's larger group or clan
- LGB - the wife's larger group or clan
- S - society at large
- C - the cosmic world or universe

Working on the perceived need to impose positivist English law, as discussed in 3.1 above, a fundamental assumption was made: that any valid legal system must comprise of a fixed and authoritative body of rules, preferably contained in text form. This was of course a typical 18th/19th century approach, but it was also a fundamental error, the social repercussions of which are surfacing to date. The British administration, from the East India Company onwards, was confronted with a perplexing assortment of texts and customs combined in an almost undifferentiated body of religious belief. However, the positivist assumption that an authoritative body of law could perhaps be isolated from within this medley of beliefs led to a search for such a compilation of texts that might represent Hindu law in totality. Although it was commonly argued that indigenous jurisprudence, whether *śās ra* or customary law, ‘left gaps’ in the substantive law of India, there were no available rules to govern the disputes occurring due to the changed lifestyles, including legal life, under British administration (Maine, 1890: 209). This was one of the reasons for the renewed emphasis on codification and to find a textual representation of Hindu law, which continued to hold a vacancy for custom. In the ensuing process snatched snippets from texts and from the interpretations of various *sastris* entered into the Anglo-Hindu code. This establishment of a definitive version of Hindu law from the written texts was in itself a process of haphazard selection; the rules selected were, however, henceforth taken to be ‘the law’.¹⁶⁷ Interestingly, this was described by eminent Sanskrit authorities, in a hidden reference to Professor J.D.M. Derrett, as a ‘hybrid monstrosity’ (Hooker, 1975: 68).

The early case of *Muttu Vaduganadha Tevar v. Dora Singha Tevar*,¹⁶⁸ shows how these rules became well-settled in the form of precedent and further shows evidence of the early concept of ‘living law’ influencing text and custom.¹⁶⁹

“The Hindu law on the subject which the court should endeavour to ascertain is the existing living law which is to be sought not merely in ancient treatises and commentaries, but in the consciousness of the people and the practice of everyday life. From the commencement of the British administration of the Courts have made it their business to ascertain the alterations to which in the course of the ages

¹⁶⁷ When highlighted in this way; by ‘the law’ I refer to the positivist western model jurisprudence that assumes that law flows from textual prescriptions.

¹⁶⁸ (1879) 3 Mad. 309 at 310

¹⁶⁹ Later courts were in fact unwilling to upset prior decisions on the sole ground that newly translated texts would show up earlier deficiencies.

the ancient law has been subjected, and for this purpose the Judges have from time to time consulted text-books and commentaries and the opinions of learned Hindus and Englishmen who have made the subject of Hindu law a special study; and unless we are willing at the suggestion of recent writers to ignore the principle of *stare decisis*, we shall not be prepared to introduce doubt and uncertainty into the titles by treating every question of Hindu law hitherto decided as *res integra*, nor to confine ourselves to the consideration of obscure and conflicting texts, the binding authority of many of which has become obsolete; still less to yield to the prevalent spirit of depreciation of the labours of our predecessors and the long course of decisions on questions of Hindu law which tend to show what the law has been in modern times and still is.”

Although this appears a somewhat extreme statement of judicial policy with reference to later cases,¹⁷⁰ certain characteristics appear relatively clearly in the administration of this Anglo-Hindu law; primarily that there continued to be a gap between custom and law. This was more pronounced when custom was to be proved in the derogation of law. This was the legacy with which the legislature of independent India had to grapple, particularly in the light of the increasing division between the law in books and law in action. This is of particular concern to us here, as it impacts on our understanding of legal precepts in text and custom, and further demonstrates how these notions have evolved.

Noteworthy here is Chiba’s (1986: 6-7) definition of a legal postulate,¹⁷¹ which may meaningfully be equated with the concept of *sadācāra* and further linked to dowry itself. As outlined a legal postulate signifies:

“...a value principle or value system specifically connected with a particular official or unofficial law, which acts to found, justify and orient the latter. It may consist of established legal ideas such as the natural law, justice, equity, and so on in model jurisprudence; sacred truths and precepts emanating from various gods in religious law; social and cultural postulates affording the structural and functional basis for a society as embodied in clan unity, exogamy, bilineal descent, seniority, individual freedom, national philosophy, and so on; political ideologies, often closely connected with economic policies, as in capitalism and socialism; and so on. The legal postulates of a country, whether official or unofficial law, are as a whole required to keep a certain degree of consonance with one another. But complete consonance cannot be expected. First, because as each legal postulate is in support of a particular system of official or unofficial law, the potential of conflict with other systems... is high. Second, because the legal postulate may tend to upset the *status quo* of its supported official or unofficial law in order to improve or even replace the later. Formally speaking, a minimum integration among the

¹⁷⁰ See particularly *Venkatachalapati v. Subbarayadu* (1889) 13 Mad. 293, cited in Derrett (1968: 301-2).

¹⁷¹ Chiba’s usage of this term was first labelled “basic law” (Chiba, 1979) and later as “jural postulate” (Chiba, 1982), he emphasises however that in essence these are all the same (1986: 4).

legal postulates of a country should be preserved if the people are to maintain their national identity. But the nature of integration, and accordingly its modes and degrees, may differ from culture to culture.”

If this explanation is transposed onto the present thesis, the logic of dowry working within the Indian social context as a legal postulate linked to custom, and in opposition to the imposed law based on a foreign system, becomes clear. Is it therefore possible to examine the working of the dowry system as a legal postulate in constant conflict with official law? Is dowry perhaps a postulate, which is seen to influence or indeed maintain order in its adherence within a marriage?

It is noteworthy that the particular literary tradition, known as the *dhar as ās ra*, in which the laws and customs of *Brahmanaical* India are believed to be articulated spans conservatively twenty-five centuries. Contrary to expectation, although most concepts contained in these verses have undergone progressive sophistication during this period, one finds “little development” (Day, 1982: 19). Instead, this literature reflects a persistently conservative pattern of beliefs in its transmission down from Vedic to modern times. To better understand the relevance of the ancient textual tradition of India to my study it is necessary to consider the possible chronology of these works, a topic already touched on in chapter 2, above. The various layers offer clues from which insights can be gained into a culture far removed from modern society.

The many-layered texts contain ideas and institutions whose authoritative forms have been formulated in ancient times. In this regard, methodologically speaking, it is preferable to use the term ‘early’ with reference to the sources of Indian thought rather than ‘Vedic’, ‘*Brahmanaic*’ or ‘Sanskritic’ for a number of reasons. It is easier to distinguish the primary legal source material from the medieval and modern legal writing, which may not have any resonance with *Brahmanaic* culture. Also it does exclude non-Sanskritic writing which are included into the early *Brahmanaical* literary collections.¹⁷² Finally, the word ‘early’ permits the consideration of references to custom and behaviour contained in later compilations within which early texts may be partially or entirely embedded. The number of such later works from which widely known minor *dhar as ū ras* and *dharmas* have been synoptically reconstructed justifies references

¹⁷² For example the *Ramayana* and *Mahābhāra* a epics were certainly current in Prakrit for some centuries before their rendition into Sanskrit, possibly “shortly after the Christian era”. This was prior to their *Brahmanaisation* as discussed in chapter two above (Berridale, 1966: 1). These epics bear interesting cultural references to traditional marriage practices, particularly dowry.

to them. This continuous synoptic composition from early times has made the historian's task complicated in terms of dating and assigning accurate dates to the early literature which has survived into modern times. For the present purpose it is necessary to categorise this literature before proceeding to evaluate the evidence from this early phase of literary material. Further, a brief history of *Brahmanaism* specifically relevant to the legal aspect of the traditional cultural texts, which produced these very texts, as we saw already, is not out of place here.

By recounting the historical setting of the ancient period under survey it is possible to avoid a de-contextualised view of religious texts and religion. Before turning the lens to focus on the *Brahmanaical* discourse on women, it is necessary to set the stage with the relevant historical background of *Brahmanaism* itself. Dealing with the nature of *Brahmanaism* as a religious system allows us to locate the ancient textual tradition historically. The history of ideas is often distinguished from philosophy on the grounds that the latter involves an engagement and evaluation of ideas rather than a non-committal examination of concepts within their own cultural and historical context. Once more positioning myself clearly as a woman examining these texts I research the question of women within this textual background.

For a wider conceptual context, a brief historical layout of north India is useful to locate this thesis both geographically and methodologically. This study concentrates on the north Indian plains, examining a period considered to mark the spread of Aryan culture from the upper Gangetic plains into the lower Gangetic valley, and subsequently into the eastern plains of India leading further southward into the sub-continent.¹⁷³ Society between 1600-1000 BCE, in the Vedic times, was pastoral, semi-nomadic and possibly marginally egalitarian. The institutions of class and state had not emerged according to Thapar (1996b: 94-6) and Sharma (1997: 22-25); it was a cattle rearing economy supplemented by agriculture and perhaps further strengthened by booty acquisition. Around 1000-500BCE, see Map 1 representing the area of north India in question, usually classified as the later Vedic period, class and state appear to have remained embryonic. The development of territorial chiefdoms took shape, and a system of segmentary government appears to have been existent; the kin-based institutions

¹⁷³ The extension of Aryan culture into the middle-Gangetic is attested by the *Satapatha Brahmana*, some *Pali* texts describe the expansion into eastern Uttar Pradesh, Bengal and Bihar. *Asokan* pillars document this spread to Kalinga, Saurashtra and into areas beyond the Vindhyas mountains. For further detail on the spread of Aryan culture into the northern Indian plains and beyond see Sharma (1997: 77, 89, 90-91).

remained powerful, while there was a gradual disintegration of tribal society. Despite agriculture virtually taking over the earlier pastoral patterning of Vedic society, the priests appear to have enjoyed certain privileges, allowing a level of dominance in this non-monetary agrarian society. They certainly, through their elaborate rituals, provided a linking mechanism between the sphere of humans and the macrocosm. According to Sharma (1997: 162) this priestly dominance resulted from the expansion of Aryan culture and the integration of Vedic and non-Vedic peoples.¹⁷⁴ There are evident structural links between religion, society and polity and the *Brahmanaical* perception of women which we cannot explore here in further depth.

The historical conditions prevalent in India during the formulation of these texts form the backdrop for the re-invention of *Brahmanism* and what has been called the *Brahmanaical* discourse (Ray, 1999: 6). The re-moulding of sexual behaviour and all other aspects of life during the period 500 BCE to 300 BCE, into a specific representation that *Brahmanism* formulated constitutes this restructuring.¹⁷⁵ According to Thapar (1984: 155; 1996b: 117) the vaguely modern notion of the State began to develop and emerge around the first millennium BCE.¹⁷⁶ This significant change occurred due to the widespread use of iron tools and the further expansion of Aryan culture eastward, leading to developments in economy, politics and society. The emergence of monarchy and the state system are important here as they seem to have bolstered the evolution of *Brahmanaical* thought and its concurrent discourse on women. See Map 2 for a representation of the north Indian and southern emergence of feudatory areas.

Briefly summarised, this period is further marked by the second phase of urbanisation,¹⁷⁷ supplemented by expanding trade, a monetised economy and private property, which are crucial aspects to the present discussion on dowry. The development of the concept of private property meant that land, previously owned and worked by clans or extended households could now be bought and sold individually.¹⁷⁸ Significantly the

¹⁷⁴ See also Thapar (1996b: 96-105) and in more detail Sharma (1997: 56-88; 1996: 177-184, 357-62) for a description of later Vedic society and the development of its polity.

¹⁷⁵ This time frame is dictated primarily by the texts used as sources here.

¹⁷⁶ Sharma is of the view that the State as we understand it today emerged in the age of the Buddha (1996: 185-232, 363-7; 1997: 89-134). According to Kumkum Roy, (1994:1-29) the monarchical state in India emerged between about the eighth and the fourth centuries BCE. No exact date has been agreed upon this however.

¹⁷⁷ The first phase of urbanization was possibly around the initial settlement around the Indus catchment area, or *sapt-sindhu* see Ray (1999: 6-18). See Map 1, pp. 80 above for a geographical orientation.

¹⁷⁸ Oldenburg (2003: 14-15, 104-6, and 146-9) asserts that the concept of the private ownership of property was introduced by the British and had far-reaching consequences on strengthening the strangle-hold of

emergence of the *ha a*, previously head of the extended household or community was transformed into a private land owner and trader.¹⁷⁹ Roy (1994: 268-284) observes that this transformation left an indelible imprint on gender relations in ancient India. She argues that the increasing importance of the *ha a* figure rendered the roles of the others in the household, particularly women, peripheral. She in fact believes that this may have even led to a detrimental effect on the social/sacred order. This process emphasised the monopolistic ritual position of the *ha a*, the formal exclusion of women from ritual, stronger patrilineal ties within the household and the disintegration of extended kinship ties. As outlined above the period in question, 500 BCE -300 CE was rife with turmoil and change.

There is the possibility that a *Brahmana-k a r ya* alliance may have been resultant from such constellations whilst the monarchical form of government was strengthened. The political and economic struggle gave way to an increasing economic surplus, which Sharma believes transformed Indian society distinctly (1997: 163-4; 1996: 234-5). The *ar a* system legitimising the collection of the taxes from other sections of society, like the artisans, peasants and slaves, seems to have found added impetus in this period.¹⁸⁰ Even the most cursory reading of the *dhar a sās ra* literature reveals an extended emphasis on *ar a*. Sharma has defined it as a device for regulating production, distribution and tax collection, further as a system that promoted subordination. An analysis of this system reveals a straightforward ideology of hierarchy, with the *Brahmanas* being afforded a privileged ritual status in society, while the *k a r yas* were characterised as the rulers, and therefore second in order of divine importance. Their *ar a* status authorised their right to rule and subordinate the other lower *ar a s* through the collection of taxes, enabling them to support the *Brahmanas* who performed increasingly sophisticated rituals for the rulers, thus earning their upkeep. This kind of job creation stood them in good stead for several hundred years, and may be seen to date when *Brahmanas* insist that ‘proper’ marriage rituals need to be performed, an approach that is even reflected in the statutory regulation of the Hindu Marriage Act of 1955

material dowry. I argue from the relevant evidence that this concept pre-dates the British by two centuries and that in fact an obsession with material wealth is a trademark of *rah ana ca* ritual.

¹⁷⁹ Buddhist texts refer to *gahapati* in a similar sense.

¹⁸⁰ The first allusion to this system of distinguishing between sections of society may be found in the tenth *mandala* of the *g Veda*. See Doniger (1981).

(HMA) itself, when for example section 7(2) indicates that rituals of *homa* and *saptapadi* remain central to Hindu marriage customs, at least of the Sanskritised type.

This two-way legitimisation marks the transition to the monarchical state, since the *Brahmanas* legitimised the new political authority of the kings and in return were allowed to retain their high ritual status and were granted access to economic resources. Sharma calls perceptively this a tacit alliance between the religious and governing wings of the ruling classes for the benefit of the two upper castes. Through this alliance, they were able to corner the surplus produce to the exclusion of the *aśyās* and *śdras* (Sharma, 1997: 127-8; Thapar, 1984: 167).¹⁸¹ Sharma (1997: 127-9) points out that some feuds may have erupted between these two castes in the division of this surplus, however these were overridden in the face of opposition from the other two lower castes. Although the symbiotic link between the two higher castes is emphasised in some texts, being decreed that cooperation between them would lead to harmony and bounty; it is safe to assume that this was a conscious strategic alliance in this period of the consolidation of state power. Therefore, the *Brahmanas* legitimised centralised monarchy and in return the *kāryas* guaranteed their privileges. If they could do that, it is likely that they could also through their texts and other means engineer that certain patterns of dowry transaction should be part of 'proper' Hindu living law or *sadācāra*.

The subsequent crises reflected in descriptions of the Kali age, found primarily in the *rāas* and in the epics, appear to be manifest in the political and social order in the third century CE. According to Hazra (1940: 215-8) the earliest description of the Kali age is from a text of this period. He further suggests that 200-275 BCE be assigned to represent the perceived start of the Kali age.¹⁸² The primary characteristics of this age appear to be the admixture of castes or *arasaṃkara*, deep hostility between the *Brahmanas* and *śdras*, the refusal of the *aśyās* to conduct ritual sacrifice and pay taxes, widespread heavy taxation, insecurity of private property and family, theft, and dominance by *mleccha* or heretic outcaste princes. Sharma (1997: 147-9) identifies

¹⁸¹ For a further discussion on how *arasa* is seen to have strengthened monarchical states see Roy (1994: 211-241), and also Thapar (1996b: 118). For a detailed analysis of the term *arasa* its shortfalls and its political allegiance see Vatuk (1975: 159-60).

¹⁸² This period saw the decline in the rule of the Kushanas and the Satavahanas and the rise of the Guptas. According to Yadava (1978-79: 31-63) the Kali age alludes to foreign invasions, the emergence of a new ruling aristocracy including foreigners, natural calamities, economic decline including the decay of cities, trade, commerce and the monetary economy, disruption in the *caturarasa* (four castes) system as experienced in the rise of the *śdras*, the degradation of the *aśyās*, the depression of the older ruling aristocracy, heavy taxation and severe exploitation, and the impact of heretical religions.

evidence of urban decay and decline in trade and commerce as a result of oppression, which further led to migrations. He also points out that invading foreigners and new dynasties took care to adopt the *Brahmanaical* way of life, in order to receive legitimisation by the *Brahmanas*. The emphasis seems to have been on *ar a samkara* as the most potent pitfall of the age. Keeping in mind the hierarchical ideology which gave birth to the *ar a* system in the first place, since it could guarantee vast benefits to the two upper castes, it is scarcely surprising that texts composed by the *Brahmanas* should condemn in no unsure terms the intermixture of castes. This is most evident in discussions on suitable marriage unions, and especially various marriage forms suitable to the various castes.¹⁸³ It was feared that *ar a samkara* would in practice corrupt caste ideology and lead to a further decline in the social status and economic privileges of the priestly and ruling classes.

During this process a discourse on women emerged, categorising women on the basis of their sexual or biological nature, ultimately leading to their perception as a form of property. For instance women in ancient India are never classified according to caste or other important *Brahmanaical* criteria like *varnāśra a dharma*, *purusharthas* or even *samskaras*. The theology of this rejuvenated *Brahmanism* as well as its discourse on women is expressed in the texts of the period. Using these texts as evidence this thesis draws heavily on the *dhar aś ās ras* especially *Gautama*, *Apastamba*, *Baudhayana*, *Vasishtha*, *Vishnu*, *Manu*, *Yajnavalkya*, *Narada* and *Brihaspati*.¹⁸⁴ In the religious sphere this period marked the rise of numerous rival heterodox sects, the most important being Jainism, Buddhism and the Ajivikas. The emergence of these sects severely challenged the older *Vedism/Brahmanism* as they primarily refused to validate the *ar a* system, initially at least, which directly jeopardised the ritual supremacy of the *Brahmana* version of a socio-political order. The popularity of these heterodox religions forced *Brahmanism* to include ascetic principles and assimilate the concept of *samnyasa* as the fourth *āśra a*. This had an immediate impact on *Brahmanism*'s earlier emphasis on

¹⁸³ See Altekar (1938) and Menski (1987) on marriage forms and their meanings for the communities inferred.

¹⁸⁴ Almost all the texts used through this study relate directly to the north Indian plains. However, the *BaudhayanaDhar asū ra* is believed to have been composed south of the Vindhyas (Bühler, 1882: xxv-xxxv). The explanation for this belief is not supported with sufficient evidence. Although it is not impossible that this *Dhar asū ra* was composed in the south, in style and genre it is considered part of the northern *Brahmanaical* tradition.

procreation, and is reflected in its discourse on women, which accords them an ambiguous status as both dangerous and yet necessary.¹⁸⁵

Women in ancient India were thus, as we began to see in chapter 2, a heterogeneous category identifiable by caste, class, religion and region. However, since the debate here concerns the *Brahmanaical* worldview on women it is important to identify what *Brahmanism* meant by women as a category? The *Brahmanaical* texts use value-neutral terminology. In this regard Ray (1999: 2) explains utilising terms like *stri*, *nari* and *yosit*, which do not distinguish between class or caste differences the texts, assign value-neutral positions to women. The texts rarely refer to *brahmanas* or *ś dr as*, or distinguish between women of the ruling or working classes. *Brahmanaical* strictures were meant to apply to all women; however the main framework for these texts and their authors was filled by women belonging to the two upper caste groups (*Brahmana* and *k a r ya*) and the upper, ruling class women who were considered indispensable to the process of the re-construction of the *Brahmanaical* order. Leonie Archer's (1994: xvii) observations are significant here:

“There are tensions, both in the attitude of the ancient writers to the construct that they and society have created (and the need for the chosen social order); and at the interface between this abstract and the actuality of daily existence. ‘Woman’ may in some sense be homogenous; women are not.”

She also points out that women represented in textual sources tend to be upper-ranking. This is reflective of the problems faced by ancient writers, who at some level acknowledged this disjunction both within the representation and between the representation and reality. It therefore appears that the primary aim of both texts and discourse is to establish parameters to bind and guide the behaviour of the normative upper-caste/ class woman and by reflection of women in general. By reflection this thesis concentrates on these two categories, since the main referents of this textual discourse are upper-caste and upper-class women. So to what extent do these perceptions on women filter into tradition and practice affecting the role women are required to play? And, does this link to dowry expectations?

Returning to the thread of my argument within this thesis, when examining the position of law and law making as represented by these ancient texts what do we find about dowry? There is clear ideological preference for certain behaviours, whether or not

¹⁸⁵ See Jamison (1996: 14-17).

they are exactly prescribed, they certainly seem proscribed. Most clearly defined is the position on the bride-price marriage; and the disdain shown for it in preference for the dowry marriage. If we highlight here the fact that law as ‘living law’ is not found in mere positivist ideals, similar to Nietzsche’s refuting of the notion of golden beginnings as flawed, then perhaps we need to seriously re-consider the position within the history of thought and ideas as represented by the Enlightenment, that an evolution of thought might *not* always flow chronologically getting better, or more precise, or more just. So dowry as a custom may not be bad if we examine the evolution and context for the sociological rationale for behaviour that goes against the grain of a western mind-set. It is as Louis Dumont (1959: 520-1) predicted, that intervention of sorts has damaged the hierarchical functioning and processes of kinship organisation within disparate Indian communities. The homogenising effort of the west for the past several centuries, most often seen as good and proper going hand-in-hand with the democratisation of nations and their creation is today defunct. Man as much as he is a social animal, and is uniquely linked to the rest of his society, also thrives on hierarchy. Dowry seems very much a key within the keyboard of society, albeit a black one. Therefore dowry may not be as a custom problematic, as much as its practice today is out of sync with certain modern expectations of “civil” society.

3.3 The role of the Veda and Dharma texts

“The role the Veda has played in Indian tradition appears paradoxical, ambiguous...”

(Halbfass, 1992: 1)

Due to the extensive synoptic borrowing between texts of various periods it is hard to identify a clear chronology. Besides the almost arbitrary handling of the literature through the ages, guided more by utilitarian purposes rather than any effort to maintaining an historical consideration, this has further complicated any attempt to chronologically arrange the history of Indian literature into a meaningful evolutionary framework. A single linear development does not appear tenable for the diverse literary traditions of the different *shakhas* which comprise the schools of arts and sciences of ancient India. It suffices for the present purpose to identify the overlapping nature of both the texts and the time-periods during which these emerged.¹⁸⁶ The earliest stage that

¹⁸⁶ It is possible for a more generalised classification to refer to literary historians like Arthur A. Macdonell (1925), Max Müller (1926), Winternitz (1927).

concerns this study is that of written composition in which the oral traditions of a school of *karma* or the arts and *jnana* were initially put into written form either in metric or discursive form sometime between the nineteenth and ninth centuries BCE. This followed a period of commentarial writing that includes the earliest attempts at organising the vast layers of information first into elementary, then gradually more sophisticated systems between the ninth and sixth centuries.

This systematisation reached its zenith of sophistication during the *sū ra*-stage, possibly between the fifth and third centuries, a time in which the systems were reduced to summary form in aphoristic texts. Appending commentarial literature by either the author of the text or by members of his school, introduced the stage of commentary in the development of this literary corpus. The emphasis on brevity that seems to be characteristic of this literature created a need to elaborate obscurities, interpolate corrections, and further supplemented rules of interpretation. As noted in chapter 2, to link to the Vedas, however general, was to notate authority. Interestingly these commentators acted not just as interpreters, they established the canonicity of the authors whose titles they adopted and endorsed. Most importantly these commentators created and reaffirmed an exceptional authority for successive generations despite continuously reinterpreting their teachings and adapting them for contemporary conditions. What this stresses is that there was no period in which commentary-making ceased, so that by the modern period several thousand authoritative commentaries competed for attention. The majority of those texts are not even translated into European languages as yet.

The composition of the mahabhasyas or the major commentaries delineates the high-point in the history of Indian literature, though only generalised dates can be assigned for the commentarial stage of that history. The major commentaries on the dharmaśāstra literature coincided with an energetic productivity in specialised works on themes and topics of jurisprudence. Such specialised attempts were bound to generate a similar trend in sparking further commentaries while also encouraging repeated attempts at more readily intelligible or concise and perhaps convenient presentations of early major authorities. To summarise therefore:

TENTATIVE CHRONOLOGICAL TABLE
 from P.V.KANE: HISTORY OF DHARMASASTRA, VOL.2, PART I, pp. xi - xii : Pune 1941, 2nd Edn. 1974)

4000 B.C.-1000 B.C.	The period of the Vedic Samhitas, Brahmanas and Upanisads. It is possible that some hymns may go back to a period even earlier than 4000 B.C. and that some Upanisads (even out of those that are regarded as the principal and the earliest ones) are later than 1000 B.C.	600 A.D. - 900 A.D.	Most of the other smritis and some of the puranas.
800 B.C.-500 B.C.	The Nirukta.	800 A.D. - 850 A.D.	Visvaṇṇa, com. of Yajñavalkya.
800 B.C. - 500 B.C.	The principal śrauta sūtras (of Apastamba, Asvalayana, Baudhāyana, Kaṭyāyana, Saṅkhyāyana, Lāṭyāyana, Dṛāhyāyana, Śaṅkhaśākhā) and some of the gṛhya sūtras (Asvalayana, Apastamba & c.	900 A.D.	Medhātithi, com. of Manu.
600 B.C.-300 B.C.	The dharmasūtras of Apastamba, Gautama, Baudhāyana, Vasiṣṭha and the Gṛhyasūtras of Parāśara, Baudhāyana and some others.	1100 A.D.	Mitākṣara of Vyāsaśara.
600 B.C.-300 B.C.	Purāṇi.	1100 A.D. - 1150 A.D.	Kalpānu of Lakṣmīdhara.
600 B.C.-300 B.C.	Jaimini's Pūrvaṇimāṇsa-sūtra.	1100 A.D. - 1150 A.D.	Jinīva-āhara.
300 B.C.-100 A.D.	Kautilya's Arthashastra.	1125 A.D.	Apārka.
150 B.C.	Maitrābhāṣya of Patañjali.	1150 A.D. - 1200 A.D.	Smṛtyarthaśara.
200 B.C.-200 A.D.	Manusmṛti.	1200 A.D. - 1225 A.D.	Smṛticandrika.
100 A.D.-300 A.D.	Yajñavalkya-smṛti.	1150 A.D. - 1300 A.D.	Haradatta.
100 A.D.-300 A.D.	Viṣṇudharmasūtra.	1150 A.D. - 1300 A.D.	Kulluka.
100 A.D.-400 A.D.	Nārada-smṛti.	1260 A.D. - 1270 A.D.	Hemadri's Caturvarṇacintāmaṇi.
200 A.D. - 500 A.D.	Vaikhāṇasa-smṛti.	1310 A.D. - 1360 A.D.	Candēvara, author of the Gṛhasiṭha-
200 A.D. - 500 A.D.	Sāhara com. of Jaimini.	1300 A.D. - 1380 A.D.	ratnakara and other Ratnakaras.
300 A.D. - 500 A.D.	Brhatspatismṛti (not yet found).	1360 A.D. - 1390 A.D.	Madhavācārya author of Parāśara
300 A.D. - 600 A.D.	Some of the extant purāṇas viz. Vāyu, Viṣṇu, Mārkaṇḍeya, Kūrma, Matsya.	1425 A.D. - 1450 A.D.	Madhavarjita
400 A.D. - 600 A.D.	Kaṭyāyana-smṛti (not yet found).	1520 A.D. - 1570 A.D.	Madhavarjita
505 A.D. - 587 A.D.	Varaṇa-mihira, author of Brhatsamhitā.	1610 A.D. - 1640 A.D.	Raghuṇandana.
650 A.D. - 750 A.D.	Tantravartika of Kumārila.	1610 A.D. - 1640 A.D.	Karmakarakabhāṭṭa, author of Nitya
788 A.D. - 820 A.D.	Śaṅkarācārya, the great Advaita philosopher.	1650 A.D. - 1680 A.D.	śiṇḍhu and Sudhokarmakara
		About 1686 A.D.	Nityānanda, author of Saṁsāra-
		1700 A.D. - 1750 A.D.	mayukha and other Nityukhas.
		1750 A.D. - 1820 A.D.	Mitra, Mītra, author of
		1790 A.D.	Vīramitrodaya.
			Anantadeva, author of Saṁskara-
			Kaus-tubha.
			Smṛtimuktaphala of Vaidyanātha.
			Nagojibhāṭṭa.
			Balambhāṭṭa, author of
			Balambhāṭṭi
			Dharmasīṇḍhu (of Kasiṇātha)

Table 2: TENTATIVE CHRONOLOGY TABLE – KANE [1941/1974]

- i) There was no linear literary development, neither were contemporaneous literary traditions equally paced in their simultaneous development.
- ii) The earliest commentators were the first to promote canonical status of selected works of their dharmaśāstra schools, edited, redacted and generally published repeatedly for future generations. The deletion is to the extent that assertions which might have become obsolete or embarrassing were reinterpreted in a manner supportive of the prestige of the primary source or its school of interpretation rather than in a manner which could discredit them.
- iii) The commentarial and exegetical literary tradition thus generated, fulfilled a conservative function by rarely introducing new ideals to replace old ones, and by reiterating and updating concepts engendering the belief-system of ancient authority.

It is possibly due to the strongly conservative nature of this literature that numerous ancient texts have survived either as independent sources or through extensive quotations in commentaries, compendia, and thematic digests. The reverence of the commentators for named authorities, particularly of legendary authors, and their seeming indifference to historical dates, makes dating, as stated earlier, difficult.

An excellent and prime example of this reverence is the *Manusmṛiti*, held among the sources of *dharmaśāstra* as a leading authority, a status acquired early. The other *śāstras* on *dharma* texts are said to become authoritative only insofar as they reflect or support the *Manusmṛiti*. It is worthwhile to discuss this text and its history at some length as it exemplifies my argument of tradition shaping text, and in turn therefore text influencing tradition. Dating this authoritative text has troubled historians to the extent that it continues to hold the dating of other early texts in suspense. It seems certainly an early work, based partly on the fact that many works agreed to be early texts either cite either the *Manusmṛiti* or earlier versions of it, in some cases they follow the order of its contents.

There is evidence to suggest that its composite origins and character are evident in the *Manusmṛiti*'s attribution of authorship to the sage *Bhṛigu* (MS 1.35, 1.59), in references to the *Manu-saṁhitā* at the end of each section which could be to an early title

of the work or even to the *Bhṛgu Saṁhitā*; which may refer to an original composition.¹⁸⁷ Academics are not in agreement on whether an early *sūtra* existed that was named after Manu and which formed the basis for the extant *Manu sūtra*. Kane (1966), and Indian academics he cites, disputed Max Müller's suggestion that a hypothetical *Manava Dharmasūtra* was the original source of the current *Manu sūtra*. This source, should it exist, is yet to be disinterred. There is the possibility that different compilations of dharma-teachings, even in the same school from which the *Manu sūtra* originated, which are comparable in subject matter and may be attributed to the same author, but are different in approach and treatment, virtually destroy any positive results of attempted dating. Maine notes "as regards the *Manava Dharmaśāstra*, the *Manu* translated by Sir William Jones and asserted by [Jones's] native teachers to be the basis of all sacred Hindu law, it is a late redaction of the legal doctrine of the Manavas, a *gens* or clan called after a Manu frequently mentioned in Sanscrit literature, but mentioned by the writer of the extant book as somebody different from himself" [sic.] (Maine, 1883: 16). Important to note here is Kane's astute observation that "the chronology of all ancient works is somewhat in a nebulous state" (Kane, 1930: 1.107).

The *dharmasūtra* and the *dharmaśāstra* are recognised as forming a single genre, often misleadingly translated as "law books" (Winternitz, 1985: 538). The editor and translators of the *Sacred Books of the East* series set this definition, which Winternitz appears to agree with. He clarifies that in his opinion the *Brahmanaas* intended the *Dharmaśāstras* to impart instruction and not as written codes for practical use and application in the law courts, although he accepts that they possessed a certain "force of law". Winternitz (1985: 538-45) suggests that the metrical *śloka*s were for all the Aryas and represented an authoritative model for legal matters.

Of late, scholars qualitatively reject the *śāstras* as law books or codes (Menski, 1997: 13-16). Now, the definition of *śāstra* as law book or "works of law" seems reductionist, almost restrictive. It is far more likely to imagine that these texts contain normative rules intended to guide behaviour on numerous aspects of human life outlined by the *Brahmanaas* as important, like political and social order, moral order, religion, hygiene and others. The foremost concern they express is with *dharma*. *Dharma* has to

¹⁸⁷Stylistic, structural, and substantive evidence, on the other hand indicate that the presently extant *Manus* may not be an original work, but rather a compilation of earlier perhaps older works.

date been variously explained; as law, custom, righteousness, even duty and religion. However, none of these convey the entirety of this complex conceptual construct. Since these texts deal primarily with *dharma* an appropriate definition for *śāstras* is: treatises on *dharma*.¹⁸⁸

Dating has proved difficult in terms of the composition and compilation of the *Dharmasūtra* literature, considering that early Indian thought was transmitted primarily orally, the distance between the date a text was conceived and finally written down is considerable. Derrett points out a further difficulty, in spite of the use of writing from the fourth century CE on, most of the *śāstras* remained “fluid texts” till the final stages of *śāstra* composition in the nineteenth century (Derrett, 1975: 27; 1994: 32). See Kane’s (1941: xi-xii) Tentative Chronology, (pp.133) above.

Max Müller’s is the earliest effort to date the texts; he used similarities in language and subject as the basis for his classification, arguing that the *sūtras* belonged to the period of Vedic literature but was later than the *Atharvaśāstra* and *Brahmanaas*. He argues further that these constituted the final branch of Vedic literature and were contemporaneous with the beginning of Buddhism in India.¹⁸⁹ A number of Indian scholars refute the date he fixed for the *sūtra* period. Müller forwards between 600 and 200 BCE, whereas Indian scholars maintain this too late. Some scholars assign 2000-1000 BCE as the period of composition of the *sūtra* literature, Garg (1982) places it between the eighth and third centuries BCE. Bühler advises against assigning a blanket period for all the *sūtras*. He suggests instead that they differed according to the Vedic school to which they were affiliated (Bühler, 1879: xlv). This is most credible in my opinion considering the importance attached to teachers and their teaching in the high status afforded to the *guru*.

The *Gautamadharmasūtra* is the earliest of the *dharmasūtras* and appears to be associated with the *Ātharva Veda* School, it is also normally attributed to the sage *Gautama*, and the manual possibly belonged to the *Gautama Vedic śāstra* or school. The extant text has not suffered too many interpolations (Bühler, 1879: xlv). This text is assigned

¹⁸⁸ In this thesis I do not use any of the previous translations given for *dharma*, but continue to use the word in transliteration as a term encompassing all the above assigned meanings, where they are contextually relevant, being partial to none.

¹⁸⁹ Müller (1849) cited in Bühler (1879: ix).

the period between 600-400 BCE.¹⁹⁰ The *Vasiṣṭh dharmaśāstra* was considered supreme and appears to have been studied by the *śrautas* alone (Bühler, 1882: xi-xii), and appears to be the last remnant of the *śrautas* of a Vedic school which, along with the greater portion of its writings has perished. Its title and legend link this *dharmaśāstra* to Maitra Varuni, one of the most revered *ṛsis* of the *śrauta Veda* who was a staunch champion of *Brahmanism*, which account for its preservation. Derrett and Winternitz concur with Kane on dating this text around 300-100 BCE (Kane, 1930:19; Derrett, 1975: 28; Winternitz; 1985: 540). The *Apastambadharmasūtra* appears to have been intended for the benefit of *adhvaryu* priests, based on the *Taittiriya* recession of the *Yajur Veda* (Bühler, 1879: xi), thus fitting into the pattern of Vedic ritual cosmology and division of labour among priests. There is evidence to suggest that it may have been originally part of the *Kalpasūtra* of *Apastamba*, this does not necessarily mean that the extant text is not the original despite the additions and interpolations. Bühler (1879: xviii)¹⁹¹ believes that this *dharmaśāstra* cannot be placed earlier than 500 BCE. Kane (1930: 40) writes that it could have been written around 600-300 BCE. The *Baudhayanadharmasūtra* belonged to the *Yajur Veda* School, and according to some was originally studied by and authoritative for the followers of the *Taittiriya Veda* alone. It later became one of the major sources of 'sacred law' for all *Brahmanas* (Bühler, 1882: xxiv) and formed part of a manual on the *Kalpasūtras*. Bühler (1882: xxxiii-xxxiv) also believes that the text available today is not original, he concludes that the original version comprised the first two *prashnas*, the third and the fourth being later additions.¹⁹² Kane holds that the author of the *Baudhayanadharmasūtra* could not have been earlier than Gautama and that the text or was composed around 500-200 BCE or 600-300 BCE (Kane, 1968: 28; Lingat, 1973: 21).

Most of these ancient *śrauta* texts or remembered traditions were inaccessible to society at large; however it is possible to discern which texts were able to permeate into the social and popular consciousness by virtue of becoming common knowledge, although not everyone who quoted these appeared to have read them. Which were these popular texts which shaped the worldview definitively? In popular terms, in India and abroad, among both scholars and non-academics the most widely recognised of the *śrautas* is Manu. One of the reasons for this wide-spread recognition to date may be

¹⁹⁰ See also Bühler (1879: xlix, liv), Kane (1930:19), Lingat (1973: 24), Derrett (1975: 28), Winternitz (1985: 540).

¹⁹¹ See in particular Bühler (1879: xliii).

¹⁹² See also Kane (1930: 23).

attributed to the fact that it was possibly the first *śāstra* made available to all Vedic schools. For this reason Derrett (1975: 40-41) considers the *Manu śāstra* the first attempt at a “secular legal code”. As outlined above the popularity of this text is understandable considering the attention paid to creating and maintaining its legendary lineage. Historians and scholars have argued the possibility of this text existing in its contemporary form by the second century BCE.¹⁹³ Jayaswal (1930: 26) argues that it was a Sungan code composed around 150 BCE. Lingat (1973: 95-96) believes that it belongs to the same epoch as the Mahābhārata and therefore he dates it between the second or third centuries BCE to the second and third centuries CE, thus broadening the scope for interpolations another several hundred years. Despite disagreements on dating, it is generally agreed that including several additions and interpolations the current form of the text took final shape between the second century BCE and second century CE.¹⁹⁴ Doniger and Smith (1991: xvii, lix) have adequately summarised the pivotal status accorded to this *dharmaśāstra*:

“More compendiously than any other text, it provides a direct line to the most influential construction of the Hindu religion and Indian society as a whole. ... In the realm of the ideal, Manu is the cornerstone of the priestly vision of what human life should be, a vision to which Hindus have always paid lip service and to which in many ways they genuinely aspire.”

The second *dharmaśāstra* to be accorded secular status was the Yājñavalkya Smṛiti (YājñSm), a work of considerable length expounding a variety of subjects over a thousand verses. Jayaswal holds that this was composed during the Kushana-Satavahana period in political history, but may not agree with this placing its composition between the first century BCE and the third century CE.¹⁹⁵

Dating the *Naradaśāstra* proves as problematic. Jolly (1889: xiii-xiv) places it in the period around the fifth century CE, while Kane (1930: 205) asserts that it was composed possibly between 100-300 CE on the legs of the *Yajnavalkyas*. According to Winternitz (1985: 596) it could not have been composed prior to the fourth century CE, although parts of it may be dated to an earlier period. On the other hand Derrett (1975: 35) maintains that without argument the *Naradaśāstra* was earlier than 600 CE. The author of the *hasaśāstra* seems to have been an authoritative writer on *śāstra*,

¹⁹³ See Jayaswal (1930: 26-32).

¹⁹⁴ Kane (1930: 151), Derrett (1975: 31), Garg (1982: 401) and Winternitz (1985: 586).

¹⁹⁵ Jayaswal (1930: 60-61), Kane (1930: 184), Derrett (1975: 34), Winternitz (1985:599).

considering the vast numbers of quotations attributed to him in the later *nibandhas* and digests; however the complete version of this text has never been recovered. Jolly (1889: 276) believes this *s* was composed not earlier than the sixth century CE, while Kane asserts that *has a* prospered around 200-400 CE. Winternitz (1985: 598) places this *s* a couple of centuries after *Narada* around the third and fifth centuries CE.¹⁹⁶ However the most challenging of the *s* s to date accurately is *Vishnu*. It is believed to belong to the *Katha* School of the *Yajur Veda*, and undoubtedly contains some very old material. However, it features several excerpts which appear to be confusingly modern; particularly in its introductory and concluding chapters. While some scholars argue that it cannot have originated earlier than third century CE, Kane (1930: 69) helpfully suggests a solution. His brilliant thesis of two phases of composition sits easily with the evidence; the nucleus he suggests was composed as prose around 300-100 BCE, whilst an inflated text which exhibited considerable elements of verification appeared by 400-600 CE.¹⁹⁷

To conclude the debate on the nature of the ancient Indian texts and the role of the Vedas and the *dharma* texts Derrett's (1970: 5-6) comments are most suitable:

“The whole point of having a sacred scripture lies in the fact that the people's aspirations and intuitions, refined after centuries of hard experience..., are committed to words, crystallised in the form of propositions, many of which are none the less real for being phrased poetically and in an exaggerated tone. Many of the classic hypotheses of Indology will not stand up to rational examination: but they are believed because such beliefs express the real attitudes, inherited leanings, and group-aspirations to which most individuals in their hearts (if not always in their minds) are committed from the cradle to the pyre. The ideas to be found in the *śāś ra* are abandoned on the surface, but the attitude of mind and the conception of life remains the same. All the great features of the Hindu mind, its aptitudes, and (some will say) its shortcomings are voiced in the literature, where customs, usages, ethics, philosophy, superstition, religion, and fantasy meet and combine, to produce acclimate of self-expression which the texts individually and collectively serve. The texts have no more authority than the people give them, but they make a perennial claim on the Hindu mind such as few foreign productions, however prestige-worthy, can ever do, because they express what the people from time to time believe in.”

¹⁹⁶ See Kane (1930: 210).

¹⁹⁷ Also Lingat (1973: 25), Derrett (1975: 38), Winternitz (1985: 579).

Further, Derrett highlights the guidance-oriented nature of these texts in his assertion that rather than reflect what ‘is’, they mirror what ‘ought’ to be (1968: 79). It is clear that these texts are intended as normative guides, composed in poetic form in order to make repetition and retention easy and memorising easier.¹⁹⁸ The dissemination of these ideas to the masses seems to have been a clear goal for these early writings.

3.4 Legal text imprinting social behaviour and custom

In this section I consider how families negotiate between official laws of the state and custom in how they practise dowry, and go on to imprint their behaviour on their specific community. It will also be relevant and pertinent to consider to what extent such practices are influenced by reference to texts. This complex pattern of negotiation is crucial to our discussion, particularly in order to understand the workings of social behaviour in formulating custom, under the guiding influence of text. Or is it the other way around? Or perhaps even a bit of everything?

From the preceding discussion it is clear that texts have had a hand in influencing tradition as much as tradition itself has shaped text. But can these ancient texts be seen to represent social reality? Or should we read them as mere poetic renditions, perhaps seeking to influence normative behaviour, as some scholars inform us to? How indeed do modern Indian families view these texts, are they thought of as guidebooks or law? For instance when an act or idea is shunned as abhorrent what does this represent to the mind of an actor in Indian society, whether today or yesterday? Let us consider the medieval *Purvamimāṃsa* “maxim” according to *abara* (on *Jamini* II 4.21) when it clearly expresses that “the purpose of censuring anything is not censure pure and simple, but the purpose is to enjoin the performance of the opposite of what is censured and to praise such performance” (Kane, 1961: 581).¹⁹⁹

Dowry as a custom is underwritten rather than expressly outlined because like the verses of the Vedas the practice was commonly known, perhaps. As Menski (2002: 120) highlights Kangle’s presumption of a foreknowledge of the readers of Vedic verses, as

¹⁹⁸ Not unlike the poetic form used by William Shakespeare, making memorable quotations possible to recall for actors and audience alike, using the *iambic pentameter* a rhythm that mimics the human heart. (Abrams, 2009: 196-197)

¹⁹⁹ This is echoed in Nehru’s belief that the ultimate aim of legal reform is educative, as discussed in Chapter 1 above, also see Geertz (1963: 140-145) analysis of Nehru as a modernist.

“unspoken—or invisible—assumptions within Hindu cultural traditions”. In fact may it not be “purposeful textual silence” (Menski, 2002: 120)?

More recently when marriage and its related practices were brought within the purview of the Hindu law, as the Hindu Marriage Act (1955) Louis Dumont made a prediction. Making an assessment on the economic nature of dowry and its position as a custom within popular Hindu marriages, he wrote on this in 1959, while discussions about outlawing dowry were being held during the Indian Parliamentary debates. It is not out of place to quote his thought process, as it fairly summarises the popular belief at the time when the statute was being deliberated on.

“Marriage and the Legislator

We can perhaps better understand now how it is that marriage is such an important occasion in Hindu India, accompanied with so much expense and display. We can also understand why the reformer’s attempts at making it more economical have failed. On the one hand marriage is a sort of apotheosis, during which the bonds of caste and status may seem to be temporarily removed, and it is, in a part of the country, an occasion on which wealth is exchanged for status. On the other hand it is, in another part of the country, a ceremony pivotal to the systematic organisation of kinship, the moment when lifelong and even hereditary ties and gift relationships are created or renewed. More generally, and quite in keeping with the best tradition, the marriage ceremony can be defined as the ‘giving away of a girl’. In accordance with it, it was recognised in law that, while sons inherit or succeed to the property, daughters are entitled to the expenses necessary for their marriage.

Recently, *the legislator has upset this custom* [emphasis added]. There was an attack in the Hindu Code Bill against what we have called here the Southern kinship system. According to the draft it would have been legal to marry one’s cousin. In the Hindu Marriage Act, as it has been passed, an exception has been made in favour of recognised custom. More drastic is the principle that daughters should inherit equally with sons. This disposition destroys the traditional differentiation between sons and daughters, and hence, the very significance of marriage which we have outlined here. What will be the real impact of this enactment in the country, especially in village India, in the next decades, it is of course impossible to say, for a good many reasons. One can *predict* [emphasis added] that it will result, to begin with in a fair amount of litigation. Moreover, the particular enactment which concerns us is only one element in a system...”

Dumont’s (1959: 520) observation that the reformer and legislator “upset the balance of tradition” is very telling in terms of highlighting the invaluable position accorded to tradition within Indian society, and thereby by social scientists putting that group under a lens. Within this thesis we continually need to address the meanings accorded to tradition,²⁰⁰ the reverence afforded to it within western and eastern precepts alike, and the reason why it is important to the core argument here. Holding this in mind we can move

²⁰⁰ As the very title of my thesis suggests ‘tradition’ is key to the discussion on hand, in the next chapter (4 below) we will once more take up the meanings associated to this term, thereby adding to building on our previous exposition on it in Chapter 2. In this way we unravel and build at the same time.

on to the next historical fold in the canvas of law making with reference to dowry in India.

The Dowry Prohibition Act of 1961 (DPA) was a combined effort of the modern Indian state and the Indian women's movement (IWM) to combat the rising trend in bride-burning as it was then called. The nature of this legislation perfectly lends itself to the exposition of this thesis. It claims to be "an educative measure" (Menski, 1997: 71) in its outreach, attempting to inform and thereby transform social behaviour rather than rule make. As noted earlier, the DPA allows a minimum payment and cost of gifts amounting to Rs. 5000, which is deemed acceptable. Section 6 of the DPA further provides that any dowry given in violation of the explicit provisions of the Act shall belong to the woman or her heirs. The conclusion is thus inevitable that this reflects recognition of the limits of law and of social realism: "Thus it seems that the lawmakers even contemplated that the unfortunate woman might be killed, and were more concerned about the property aspects than about the potential victim of female murder" (Menski, 2003: 33).²⁰¹ The aims of the DPA are clarified in its preamble: "...educating public opinion and to the eradication of this evil".²⁰² Interestingly this reflects the Hindu legal conscience at work; not making law, but coercing it. Modern Indian statutes offer only guidance it is not legal prescription; persuasive rather than prescriptive. Ought not rather than may not: or *ought* not *is*, as we saw above, in Derrett's terms. This inquiry therefore also examines the role of law as an "educative measure" when it operates in conflict with social custom.

In the opinion of most "the law does not appear to have enough effect on the minds of those who turn into murderers" (Menski, 1997: 67). It appears additionally that the judiciary is split in its approach on the one hand condemning the phenomenon of dowry murder but refusing to mete out the harshest possible sentences to perpetrators of these crimes. As Menski (1997: 73) points out, the pioneering approach of the Rajasthan High Court was cut short by the Supreme Court when the former wanted to set a clear public example by publicly executing dowry murderers. Interestingly the violation of the prisoners' human rights was stressed and finally upheld as grounds to stay the execution.²⁰³ This attitude suggests that the human rights of the killers are more important than those of the victims.

²⁰¹ See also Allot (1981) on the limitations of legal application in positivist law making.

²⁰² This aspect of the Act is dealt with more fully in chapter 6, below.

²⁰³ See *Attorney General of India v. Lachma Devi and others*, AIR 1986 SC 467.

Legislation which lacks popular support is doomed.²⁰⁴ Jamila Verghese (1980: 10) argued clearly that in order to effect any change in attitudes it was imperative to work alongside relevant legislation. By examining the living law of dowry as *sadācāra*, the futility of banning dowry in the light of marital expectations old and new is further highlighted. According to Glenn (2004: 289), the community of Vedic Aryans faced a host of local, indigenous customs on their arrival into the southern part of the sub-continent. In his estimation the explanations offered in the Vedic verses demonstrates “why [these customs] should be accepted, and the surest way of doing so was to explain them [customs] largely in terms of local practice.” Derrett (1963:1) notes similarly, while Maine (1991:7) makes an analogy with grammar, in terms of recording rules of practice. About the Mānava Dharma-Śāstra Maine (1991: 27) notes the “unstructured nature” of the eighteen odd titles of law which relate to the “practical needs of society”.²⁰⁵ Glenn (2004: 298) characterises the situation aptly when he notes that the notion of law which did not appear to be contained in the books or verses of the Vedas needed to be gleaned “from somewhere”, he therefore rightly assumes that:

“Local tradition, of the virtuous, could even be shown to have unsuspected, divine qualities. This must have been taken as good news. So from Manu on, *sadachara*, that which has been handed down from time immemorial, by those who are virtuous, has also figured as a source of hindu law. [sic] In contemporary books it is usually referred to as ‘custom’ or ‘usage’ and we see here the same conversion of normative information into repetitive fact as has occurred in the west, yet the language of *sadachara* makes it clear that we are dealing with informal local tradition.”

Lingat (1973: 14) warns that “one must take care” when making such assumptions. Interesting to note is Patrick Glenn’s linking *sadācāra*, an ancient and medieval assertion, to a modern legal pre-requisite for a ‘custom’ having been in evidence from “time immemorial” to have some credence in a court of law. I am not quite certain where he assumes this connection from, but it appears to have bearing in the local understanding of how customs flow from generation to generation. Of course, worthy of note is the fact that certain common legal parlance has entered everyday language usage as well.

Staying with the idea of intent of law from ancient to modern times it is important to discuss the nature of the most recent additions to the law books of India. The

²⁰⁴ For a detailed analysis of the negotiation between law and public opinion in comparative terms in India and USA see Gupta (2001).

²⁰⁵ See also Venkataraman (1987: 2).

Protection of Women From Domestic Violence Act (2005) (DVA), for instance, has important repercussions for the DPA, instituted some decades ago. Modern Indian legal statutes therefore, similar to the ancient texts offer only guidance. Once again we see the notion of persuasion over prescription. It is not legal prescription: *ought* not rather than *may* not. Nehru believed that it is impossible for legislation to solve deep-rooted social problems without the rallying support of the people. He admitted the limited role of law in fostering social change during the joint sitting of both the Houses of Parliament on the DPA in May 1961, when he declared:

“Legislation cannot by itself normally solve deep-rooted social problems. One has to approach them in other ways too, but legislation is necessary and essential, so that it may give that push and have the educative factor as well as the legal sanctions behind which help public opinion to be given a particular shape.”
(Bhatnagar, 1996: 3).

This view has been reiterated by the higher courts in the country on several occasions, as this Supreme Court judgement summarises:

“The greed for dowry, and indeed the dowry system as an institution call for the strictest condemnation. It is evident that legislative measures such as the Dowry Prohibition Act have not met with the success for which they were designed. Perhaps, legislation in itself cannot succeed in stamping out such an evil, and the solution must be ultimately found in the conscience and will of the social community and its active expression through legal and constitutional methods [sic.]”²⁰⁶

3. 5 Conclusion

To contextualise the above discussion in order to summarize and lead into the following chapters it is important to return momentarily to the current situation in modern India; both in terms of law making efforts, and social activism. This keeps the argument alive, as there is still older textual material to look at in, in chapter 4 and particularly in chapter 5 order to finally examine dowry in the past. This layering of the argumentation, in onion-like strands, allows the discussion to move between past and present and suits the subject better, in terms of the process of history itself. Dowry functions in a similar ongoing dialectic, rather than a mundane chronology. Therefore to conclude the discussion of legal precursors in the past we must attend to the present.

Outlawing dowry outright has perhaps not been the ideal way of dealing with the ‘dowry problem’. It has in fact exacerbated the current situation, combined with

²⁰⁶ *Shri Bhagwan Singh* 1983 2SCWR.

consumerist trends.²⁰⁷ Not only does a father have difficulty in not giving his daughter any gifts at marriage, but girls now demand trousseaus that reflect their status (Menski, 1997: 68; Jhutti, 1998: 183).²⁰⁸ Few women would like to enter their marital homes unaccompanied by trousseaus, though modern ‘love marriages’ may mean that a dowry is not part of the equation – only to cause trouble later (Saavala, 2010). The steady rise in the statistics of dowry deaths reflects possibly an adherence to the ongoing practice of dowry. There are an estimated 19 dowry-related deaths a day or one death every 75 minutes according to the latest National Crimes Bureau all India statistics.²⁰⁹ Many deaths are, however, wrongly registered as dowry killings or dowry-related suicide (Wyatt, 2008). Many other deaths, at the same time, go unrecorded.

Therefore, the state has been forced to recognise and address the steady increase in the actual death rate of young brides. Perhaps each quarter, when it is politically correct, a fresh reform is announced to prove that the state does not tolerate cruelty to women, or indeed condone it. Whatever the motivation for the renewed reformist stance of the various governments might be, there is some movement forward in a more meaningful direction recognising that the area which requires careful scrutiny is the grey area of law during which marriage negotiations occur. Recent attempts have been made in this direction by various state governments to curb the practice of dowry.

Criminalising dowry has not worked, as Derrett, a legal theorist and Dumont, a social scientist warned. The dowry system remains stubbornly in place. “The obvious remedy is to decriminalise the *giving* of dowry” (emphasis added) (Menski, 1997: 72) but this has not yet been attempted by lawmakers. Therefore, as this thesis continues an examination of this custom, informed by both legal and anthropological science, we find the following. The state continues to display efforts of activism. In one instance, as mentioned earlier in this chapter, DPOs²¹⁰ were mobilised by the Haryana State

²⁰⁷ See two recent dowry-related cases reported in the past month (2010): One is a tragic case of homicide being disguised as suicide (July, 7 2010, Mumbai Mirror), another shows initiative on the part of the police to arrest an absconding film producer Gaurang Doshi (September 4th 2010 Mumbai Mirror), for further detail see the online articles at <http://www.mumbaimirror.com>. Both these cases reflect the notion that more than dowry mars these marriages, and that at times dowry is being used to bring difficult husbands to book.

²⁰⁸ See also “Delhi girls rebel over dowries”, 2003/05/19 Sanjeev Srivastava. (http://news.bbc.co.uk/world/south_asia/3040681.stm).

²⁰⁹ These were the most comprehensive statistics valid in August 2004. The National Crime Records Bureau (NCRB) updates its website with monthly updates of these figures, or should. As of April 2010, the latest numbers are as follows: In 2007 the figure of 8093 dowry deaths was reported on this website, as all India figures. For detailed statistics see: www.ncrb.nic.in

²¹⁰ “The Battle of the Barat Begins”, *India Today* March 10, 2003: 17.

Government as a last resort in the first decade of this century. These officers had been “empowered” with ‘The Haryana Dowry Prohibition Rules’, to not just register complaints but also conduct surprise raids. This step was taken in response to the 871 per cent rise in dowry deaths in this state, between the years 1981-2002: 28 deaths rose to 263. In 2002 1,512 cases of harassment by in-laws were registered. Can such extreme measures be employed to continually police every community marriage celebration in a nation of over a billion? In the next instance, in 2004, the Maharashtra state government was put under pressure by the government at the Centre, who ordered the research unit and the vigilance cell at the Nirmala Niketan College of Social and Home Science to be disbanded. In an interview ex-principal of the college, Prof. Kalindi Muzumdar, recorded her opinion that this disbanding was in order to redirect funds to more amenable social rehabilitation projects, where a progressive and empirical outcome could be recorded, i.e.; women rag-pickers. The then principal, Sister Mary Alphonse, as an academic mourned the fact that fifteen years of research and statistics carried out by *Sakhya* on over one hundred cases of dowry harassment, burn victims and murder trials would have come to nought.²¹¹ The issue, as has no doubt become apparent from the above discussion, is that dowry as a custom and approaches to curb, or ‘eradicate’ it have been confused and confusing. What remains it to understand the custom, which the wider argument in this thesis, within the framework of text and tradition, attempts to do.

Therefore the question raised at the outset persists, what is the role of ‘the law’ in this social context to effect dowry as a custom? In fact, is there really a role for law? Doesn’t custom play a more decisive part in forming social attitudes to socially embedded practices? This reiterates the key conceptual question that my thesis addresses: Does custom or law inform the ‘right’ behaviour of people? Briefly analysing the role of the DPA at this early stage in the thesis has shown how custom is being worked upon by textual dictates.²¹² Importantly, the layers of texts are being treated similarly; modern day law books may be perceived as another layer added on to the medieval and modern commentaries. In attitude texts might be revered, but rarely adhered to; what operates in the social field is custom. Statutory law has had a tough task in dealing with custom.

²¹¹ Both Prof Kalindi Muzumdar and Principal Mary Alphonse’s statements were recorded in March 2003, in an interview for a documentary film made during the course of this thesis study, *Dowry Today*.

²¹² A more cursory analysis and brief critique of the modern anti-dowry law is found in section 6.1 below.

From the discussion above it is quite clear that a text cannot be employed to root out a custom.²¹³

²¹³ The ancient Chinese custom of foot-binding, it is argued, was successfully rooted out in rather different political context of a revolutionised reformist government in modern day China. In the Indian social context, there seem to be similar success stories in terms of child marriage and sati, but the reality certainly for child marriage - remains questionable (Sagade, 2004).

Chapter 4: Dowry in context and text

Dowry terminology is a far more complex conglomerate of culture than may be at first imagined. My thesis examines this complexity in order to underpin the key argument. Namely, that any attempt to control or curtail such a complex phenomenon by textual intervention is a difficult task for any social engineer or law maker. As discussed in the three chapters above, a need for this type of study, which co-relates the various issues at play and underpins the debate itself, has been demonstrated elsewhere and is recurrently articulated (Oldenburg, 2002: 6). Without a historical reference point it is difficult to combat the controversial and troubling *Hindutva* argument that dowry is constructed by 'the other'; thereby, exonerating Hindu society of any serious socio-political responsibility. Evans-Pritchard mentions that a researcher must have the capacity "to go straight to the sources" in order to understand the 'total' phenomena in their totality (cited in Mauss, 1970: vii). Further, the importance and relevance of hypergamy to dowry is evaluated in this chapter, highlighting textual evidence from early British anthropological data to substantiate how dowry has developed into a crucial determinant in contemporary Indian marriage culture.

In order to meaningfully examine the nature of dowry we need to turn to linguistic definitions of the term. Both in colloquial usage and in historical etymology dowry appears to be a chameleon like custom, changing, altering appearance from time to time and from community to community. And, then pretending it is not even there. Dowry, as a word in the texts virtually disappears. However, in order to further our understanding of the complex conglomerate of culture that dowry is part of, it is worthwhile to begin by analysing the various meanings; even symbolism ascribed to the term in India over the last several hundred years. This chapter ends with a summation of how dowry may be construed as contemporary *sadācāra*, leaving room to examine the evidence from the ancient and modern texts in chapter five.

A number of studies have documented the expectations and marriage customs prevalent in different regions of India. What is required here is an analysis of this literature with a firm focus on those expectations related to dowry. I do not intend to conduct a field study as the emphasis here is to discover the conceptual foundation for

dowry. The intent is to prepare the literary ground for a future research project to conduct field analysis to develop the concepts that will come to light through this thesis.

The conceptualisation of dowry as good behaviour, and therefore good practice; or as a symbol of *sadācāra* is dealt with in detail. For instance, the sympathy for a father is supreme in Indian society. These attitudes and their associated social backlash are further examined below in section 4.2 and also with reference to custom and *sadācāra* in section 4.5 as an investigation of the influence of custom on contemporary society in India, as compared to that of official law, on the collective conscience of the people. The primary research question raised and reiterated here is how dowry as a ‘custom’ continues to defy legal prohibition. Using the theoretical framework of Sanskritisation it is possible to examine the present prevalence and wide-spread nature of dowry in India today. The wider argument, as seen in chapter two and three above, examined the role of text in ancient law making. In this chapter we examine the applicability at ground level of the legal process as it was conceived of in ancient times in order to tease out the conceptual underpinning of this process.

4.1 Definitions of dowry

What precisely constitutes this custom of dowry? And why is it so peculiar to Indian marriages at home and abroad? In order to answer, or even begin to understand the answers to these and other questions we must trawl through the textual material discussed and analysed in chapters two and three. We must take into account a number of crucial factors which underlie the process of evidence gathering, and factors which must not be lost sight of as they have bearing on the conclusions that we are led to. Outlined are three observations:

[1] There is no iconography or visual imagery available for the people we are putting under the microscope in the earliest period of our study, or the pre-classical stage of what may be called Vedic Law (BCE 1500- BCE 800);²¹⁴ there is of course an immensity of literary sources. However, in anthropological terms there is an accepted paucity of direct testimonies²¹⁵ and observations²¹⁶ of the women and men about whom

²¹⁴ For an assessment of the possible evolution of laws in the dominant Western model jurisprudence sense see Menski, (1997: 6-7; 2003: 69-130).

²¹⁵ As we will see in chapter six, the compelling nature of a woman’s dying declaration, either recorded by a social worker, police officer or in some poignant cases scrawled on the victim’s own body in a desperate

we are concerned. Our sources are completely oral or verbal, committed to textual form in arbitrary fashion across millennia.²¹⁷ However the Warli paintings come close.²¹⁸

[2] The character of these texts is nearly always assumed as religious.²¹⁹ Their preservation and propagation is owed in the major part to diligent transmission; at first orally and later through writing, by an elite socio-economic class. In an attempt to transmit the very verses we see today, unaltered and unadulterated, extreme mnemonic devices were utilised so as to preserve every syllable. These have functioned as self-checks, it is assumed, but as noted by Stephanie Jamison, “these devices are only as good as the next generation” (1996: 7).

We must take note of how this transmission has been controlled through quasi-official organisations, the *gurukuls* or schools, passed from teacher to students every generation. This would have depended on highly structured guidance, with socio-economic leisure and freedom to devote numerous individual lives to developing themselves into “mnemonic automata”. And as is often assumed with oral traditions that they tend to operate in the inner sphere, informal and “non-institutional” under the sculpting hands of the womenfolk, this particular society was unique. Although, there is some evidence of early writing, and oral histories passed down from woman to woman (Lakshmi, 1995), it is the men whose domain centred on this oral tradition. In fact the Aryan oral tradition is quite the opposite of other oral traditions,²²⁰ in being “regimented, institutionalised, and purposeful” (Jamison, 1996: 7-8). A text required the stamp of orthodoxy in order to survive, as evidenced in the case of the MDS. The likelihood of the intervention or influence of women in this sphere, given the patriarchal nature of the work, seems highly unlikely.

attempt to have their version heard. During the early period of our study we have no such anthropological records available from this period.

²¹⁶ In modern day cases we have the verdicts of judges, which guide and track the overall nature of society’s abhorrence of this custom about its absolute frustration at being able to sensibly be rid of it. Again, we have no such accounts available to us from the ancient period.

²¹⁷ In fact Jamison alerts our attention to the fact that this nature of the ancient texts, particularly of concern when accessing gender studies in non-Western cultures is “more often an anthropological than an historical enterprise.” (1996: 7) This assertion is relevant to the methodology of this thesis as well.

²¹⁸ See the photo plates representing early tribal notions of the world in terms of solidarity in circles. See also Sudipta Kaviraj’s (2010: 12) inversion of Hegel’s circles.

²¹⁹ Though we have remarked earlier (chapter two) on the wide and unruly nature of Hinduism as a religion per se when contrasted with the other major institutionalised religions of the world, historically the ancient Hindu textual material is continually referred to as primarily ‘religious’.

²²⁰ See Pinkola (1992: 3-9) for accounts of folklore and its function in other oral societies.

Most academic writing attempting to analyse the practice of dowry begins by defining the term. It is clear that no consensus has been reached in terms of what is the best definition. This section examines the problems with defining dowry adequately, both in terms of legal application and for academic argument. The importance of definitions to a scholastic work needs no explanation; academics require definition as a matter of course. In terms of this custom however it seems almost as if the name itself were not meant to exist. There is no one uniformly accepted word for dowry, as resilient as the practice is, no single, individual term has been as strong as the practice itself. Other than the English, dowry, with its roots in the Latin word *dower* we find no standard Indian language word for dowry. This in itself presents an insight into the way the custom works, phantom-like, with clear impacts on law and society but with no name. This is a vital clue for my argument here, about how custom itself controls tradition. Here we have a custom and associated behaviour, which is entrenched as a determinant in marriage culture across India but which has been given no real Indian name.

Words like ‘dahej’ of Hindi origin, or *daaj*, of Rajasthani origin, come closest to being identified with the custom, but no real written rules are expressed as being adhered to in its practice. In Maharashtra the word ‘hunda’ has been locally and traditionally associated with marriage payments. In Bengal the term ‘totto’ or *tattva*,²²¹ is used to refer to the competitive range of beautifully designed and prepared gift baskets and sweets which go from the bride’s family.²²² The entire customary sphere of marriage is under-researched and continues to be in the control of certain appointed men, and at times older women at the time of the ritual to finalise a marriage transaction. Very little is recorded or written down in modern times. It is almost as if the community conspires to act in secret. The amount of dowry, when and who receives the money, is it all in cash, are there specific items like a car, or a house being given or being agreed to be given as well? All this is done in intense secrecy. Bank loans are easier available to men of good social

²²¹ Linguistically similar in sound to motto, it is a non-technical term, but field research has adequately recorded the importance of this part of the marriage celebrations and ritual ranking for us to gain an in-depth view of just how central these gifts are in ascertaining the status of the girl and her family as the relationship progresses to become affinal. See Inden’s translation of *tattva* as truth as well for a curious linguistic link (1976: 3).

²²² In this community gifts are exchanged. There seems to be a uniquely egalitarian approach to the exchange, since the flow of gifts is reciprocated. However, the pressure seems to be on the girl’s family to ‘outdo’ the boy’s side in terms of decorative beauty, detail and even number of gifts. There is a certain informal needling about the value and number of presents between the families (Fruzzetti, 1990: 38-40).

standing in society who are the father of marriageable daughters. If a bank is hesitant then other members of his family, or his peer group, perhaps even a loan shark, gets involved. For contemporary examples of the social burden on the father of the bride a cursory glance at Indian films, particularly Hindi films which furnish one with a host of situations where a father is either forced into bankruptcy or belittling himself for the purpose of arranging a suitable match for his marriageable daughter. The amount of understanding in wider society about the burden and often associated depression of a man who is ‘saddled’ with girls to marry off, or a suicidal man who takes down a whole family with him, is often forgiven by society because of the burden it is known to carry.

Cunnison’s (1970: xi) comment on the inadequacy of dowry as a word is noteworthy, particularly that “there is no convenient English word to translate the French *prestation* so this word itself is used to mean any one thing or a series of things given freely or obligatorily as a gift or in exchange; and includes services, entertainments, etc., as well as material things”.²²³ Most ethnographic studies use this French term *prestations* to mean a complex pattern of gift giving. This usage suits the intent and context of this thesis, which will therefore employ the term dowry *prestations* to represent the entirety of gifts given, before, during, after and for the occasion of the marriage. Menski (1998: 15) observes the “conundrum” of dowry definitions and maintains that there is no “one explanatory model” that may be adopted to better understand the problem. I would agree that definitions are by nature exclusive, and this explains the resultant confusion in distinguishing the concept of *s rīdhana* or women’s property from dowry practices (Garzilli, 1995). I shall therefore not attempt to introduce any new definition to the prevalent admixture.

An inherent problem with defining transactions at marriage is that they tend to be ambiguous in nature. The current legal definition of dowry does not take cognisance of the on-going payments incumbent on the wife-givers for the duration of their daughters’ life, though “in consideration of marriage” was finally altered to “in connection with” (Bhatnagar, 1996: 4). How much this has aided the actual application of the DPA is another matter. Most lawyers and activists find this definition problematic as it still does not identify the chain of gift-giving as cognisant with dowry. Also dowry negotiations

²²³ I use the same term for reasons elaborated by Ian Cunnison in his translator’s note (1970: xi).

begin well before the wedding ceremony.²²⁴ These may include various payments, for instance the costs of the actual wedding or betrothal ceremony, the couple's honeymoon, the arrangements for wedding guests, perhaps even financing the prospective son-in-law to study abroad. Recent cases have firmly established that demands of dowry are recognised as grounds of cruelty and divorce.²²⁵

There has been recurrent confusion in distinguishing the concepts of *s rīdhana* and dowry. Srinivas (1984, 11-13) categorically distinguishes modern dowry from both *dakṣ na* or gift, and *s rīdhana* . This economic aspect of dowry is taken up further here. Today, in order to retrieve the gifts made at marriage the police and activists insist on calling all retrievable items *s rīdhana* . This is because as far as ownership is concerned the accepted definition of *s rīdhana* is clearly identified as belonging to the girl throughout both textual tradition and its customary interpretations and readings. The articles that accompany the bride are quite clearly considered her own property, and are also referred to as *s rīdhana* . Upadhyaya points out, “[w]e have nothing on record to show that the wife retained the items of dowry for her own distinct use although it is possible, as remarked elsewhere, that they formed her *Strīdhanam*” (1974: 152-3). “According to some, the share of the wife consists of her ornaments and the wealth (which she may have received) from her relatives” (Ghose, 1917: 375). Therefore, to meaningfully differentiate the associations attached to both these terms as essentially separate at this early stage in the textual evidence is not possible. Conversely both the terms dowry and *s rīdhana* , especially in a legal context today, have acquired definitive meanings that we should *not* attempt to transpose on their fundamental original understandings.

Dowry in a wider global context is often conceptualised as belonging to the married couple as a single unit, as an impetus to start their new life together separate from their respective parents. In the current Indian context most newly married brides shift residence to their husband's parental home. This persistent virilocality ascertains that the bride is to some extent deemed the property of the husband, and by implication that of his family. The husband's family therefore may be tempted to consider the dowry

²²⁴ See the Indian Supreme Court ruling in the judgement on *S. Gopal Reddy* AIR 1986 SC 2184, which confirms that the DPA does apply to demands for dowry made during the negotiation period before the actual wedding takes place.

²²⁵ Dowry demands were equated with cruelty and amounted to grounds for divorce in *Shobha Rani v V.M. Reddy* AIR 1988 SC 121.

also as unequivocally their property, something they might make use of for their own daughters. This question concerning the actual ownership of the goods is considered one of the main problems of dowry. How this is handled in practice, however, seems to depend largely on the women involved, mainly the approach taken by the mother-in-law.

A number of social and economic studies conducted across the sub-continent during the late 1980s when the dowry problem was granted centre-stage, by the media and the public, have brought to light various aspects of the problem. Some of these studies have shown that women have no control over the items that constitute their dowries (Srinivas, 1984; Kumari, 1989). This further highlights their inferior status as perceived in the marital context, in comparison to female natal members. These ties of kinship hierarchy are crucial to consider when defining dowry in sociological terms (Dumont, 1962; Karve, 1965; Raheja, 1988). Notably, the rotating capital theory was forwarded by some sociologists like Dr Indira Rajaram (1983: 277) but is no longer widely accepted. Another theory also forwarded by Rajaram (1983: 276), asserted that when women from richer groups are withdrawn from agricultural work it was in order to enable them to have more leisure: "...The decline in female participation in gainful work i.e., increase in female leisure, may then simply be something purchased by the community with its increased prosperity". Srinivas (1984: 17) suggests that this theory is misleading. Instead, he states:

"It is pleasant to think that when peasants get rich they prevent their women from working for wages outside the homes so that they could have more leisure but unfortunately that is not true. When parents acquire enough land they think that their new status as landowners is incompatible with their women working for wages. Their women should no longer be seen by the *hoi polloi*. In this connection it may be noted that *Brahmana* women, *however poor*, do not work on the land for the wages like women from the other castes because their status is so high. (*In the case of the Brahmana, social and ritual status is to some extent independent of wealth*)" [emphasis added].

Relevant anthropological data substantiates Srinivas' standpoint of marriages being negotiated with the *Brahmanical* model, or the *Brahma* marriage in mind. There seems to be a ripple effect with Sanskritisation setting a clear trend of customary practice, with regard to marriage. Whether this model is real or imagined it is widely perceived as being higher in ritual terms and better in economic terms for the groom's family, while it

further ascertains a superior status in social terms.²²⁶ For instance, McKim Marriot (1955) observed that the family to which the girl is given becomes respected just as the act of giving the girl accords the family inferior status. Marriot's view on hypergamy is based on his research in the fifties on a village near Aligarh in U.P. (1955: 118-119) and follows a similar vein in purporting the ritual and social status of wife-receivers versus wife-givers. More recently Raheja's (1995) study in a Hindi-speaking region of northern India, specifically in the village of Pahansu, Saharanpur district, U.P., found that gifts are given precisely because of the assumed superiority of the former group over the latter.²²⁷

Leaving the present behind for the moment let us examine the earliest evidence as transmitted in the textual material assigned for use in the marriage ceremony. Within Vedic literature certain references might be interpreted as crucial links to modern understandings of dowry practices. Is there mention of gifts and presents, and their status or nature? The term dowry itself is not clearly identified at all, across the texts, in spite of the practice being implicit in the actions of marriage and associated ritual processions leading away from the marriage ceremony. This apparent absence is in itself an emphatic clue to the very nature of dowry as a custom. It could be suggested that since it was normal to have a dowry, so there was no need to mention it specifically in a text.

One specific hymn, interestingly used during the *Brahma* form of marriage in modern day Hindu marriages, has been noted as the "marriage hymn". Therefore our attention must be focussed on the marriage verses of the *ūr yās k a, da* X.85 in its entirety. Marriage in Sanskrit is *vi āha* loosely translated as movement; implying movement 'away from'. The one term associated with dowry in the Vedic literature, as a concept, since there has so far been no Sanskrit equivalent for it, is *āha*.²²⁸ The significance of the word *āha / āha m* in this context is important. Both words bear within them the Sanskrit root *āha*, implying movement.

According to noted Sanskritist, and compiler of the only extant Vedic concordance,²²⁹ Maurice Bloomfield (1962, 851-52) the occurrence of *āha* is most commonly linked to chariots, cars or horses. It embodies an interpretation of movement

²²⁶ See in particular the discussion centring on the eight forms of marriage in chapter five, specifically section 5.1.

²²⁷ This discussion about status and its relevance is tackled alongside hypergamy below (4.3).

²²⁸ See Bhattacharya (1999) *Dowry in Ancient India*, an unpublished masters' thesis.

²²⁹ The Vedic Concordance (1962) is a text of extraordinary importance to researchers trawling through the old text in search of single words, as clues. It painstakingly notates the occurrence of important Sanskrit words and where they appear, and how often. Bloomfield's work has not been recently duplicated, and the area of Vedic studies would greatly benefit from such a new addition, compiled in a modern context.

within it as *vi āha* does. Therefore the assumption may be drawn that the word *āha* refers to items of value, whether gifts given willingly or demanded, which accompany the bride and groom on their way to the bride's new place of residence. This is carefully examined here in order to understand the nature of these transactions. Important to note here, with specific reference to the Vedic period, is the inherent confusion with defining the concept of *s rīdhana* as separate from dowry.

The *ūr yās k a*, *da* X.85 verses identify a model marriage, and idyllic it might seem at first glance. The opening lines acknowledge the place of *rta*, the predecessor of *dharma* in terms of cosmic guidance and harmony, thereby clearly claiming allegiance to more philosophical conceptual leanings. Further, from various following verses, it is evident that the term *āha m* or *āha* refers to the 'bridal procession' that leaves with the bride on her journey to her husband's family home (Menski, 1998: 225). The term *āha* finds mention in verse 13 as *suryaya āha h*, translated as the bridal pomp of Surya, and in verse 14 as *āha m suryaya* referring to the three-wheeled chariot of the Ashvins who lead her away. This decking of the bridal chariot as part of the bridal procession is crucial to our understanding of what kind of transaction may have occurred during this life-defining ceremony. The bride and groom, perhaps having spent the nuptial night in her natal home, though that is not clear, proceed on their way to his parent's home. The gifts given to the married couple, and those given to the bride as part of her trousseau, form part of an elaborate bridal procession of which the bridal chariot or cart are a part. There is important evidence of the presence of wealth involved at this stage of the marriage ceremony. The verses clearly refer to the safe passage of the couple and their train, without molestation by thieves on their way. Simultaneous verses from the *da* make references to dowry giving and taking, fairly clearly giving us clues about the gift-giving and the associated expectations involved. From an analysis of these verses it is possible to assess the gift-giving practice and the expectations which enjoin this behaviour. For instance another verse, in its translation by Griffith,²³⁰ makes explicit mention of some of these expectations:

²³⁰ It is worthy of note that Griffith's translation of the *da* material was coloured by social issues of his time. While a later interpretation by a female academic, Wendy Doniger some hundred-odd years later may be similarly influenced in its reading by the values of its time. A comparative study of these two translations would not be out of place to fill a gap in our social understandings of academic analysis. As noted severally, philologists and historians function often in a vacuum, there is little connection with them and their audience; such a study might go some way to shortening or even filling that gap (Jamison, 1996: 8).

When a man's daughter hath been ever eyeless,
who, knowing, will be wroth with her for blindness?/
Which of the two will loose on him his anger –the man
who leads her home [*āhate*] or he who woos her?// 11

The situation described mentions the essential qualities required of a bride. Sadly the bride lacks the essential quality of having sight. Therefore the assumption is that her father will be held responsible by either the man who seeks her hand for his friend or employer (the man who woos her), or the man who will lead her away, as her husband will “loose his anger” on the father. Another interesting practice is highlighted here. The role of the mediator, either an employee or some other representative sent to make the match. This is a practice in evidence to date, wherein we also have some compensation changing hands for fulfilling that role successfully. The parties are rarely involved in the actual direct discussions or even negotiations. Professional negotiators are called upon, as Inden (1976: 2) and Fruzzetti (1990: 32) found in the case of medieval and modern Bengal. This of course leaves room for several interpretations of what has been said, and leaves room for both misunderstanding and negotiation, all of which is accepted as the way things must progress in contracting the union of not merely two individuals but essentially two families, and importantly their associated clans.

How many a maid is pleasing to the suitor
Who fain would marry for her splendid riches?/
If the girl be both good and fair of feature,
She finds, herself, a friend among the people.//12[V 27.11-12]

Griffith (1889: 154) makes an additional note to accompany this translation by way of explaining the use of *svyamcit* as herself, that it implies she is able to find herself a partner “by her own worth, independently of her dowry”.

Another verse unrelated to the actual marriage ceremony but from a hymn addressed to Indra seeking his benevolence shows clear evidence of the notions of wealth and the payment of dowry.

For I have heard that ye give wealth more freely
Than worthless son-in-law or spouse's brother/ (V I. 109.2)

Here we see a representation of both the notions; that of bride-price, given by the son-in-law, and that of dowry, often considered the responsibility of the girl's brother.

Where the term *āha* occurs elsewhere in the *da* hymns it is almost always with reference to bearing away, or carrying, or to the carriage. We may interpret from this that although there is a single reference like “*āha m*” in V . 85 it represents a practice that was ongoing and is corroborated by cross-references in other unrelated hymns as well as in later texts. Concentration on the bridal procession itself, fear for the safety of the married couple accompanied by their gifts and the bride’s trousseau, as well as the stipulation of who may or may not be part of this procession underlines the central role of the *āha m* in the *dic* context of marriage.

These verses examined in the section above provide clearly the conception of both the qualities of bride and groom and how these are linked to the payment of a dowry. What bearing does this have on wider society? Are there expectations implicit in the very practice of dowry marriage? Interestingly Zimmer²³¹ with reference to the same verse declares “a good dowry would have helped many girls to get a husband”. Now whether or not there was some amount of academic creativity, influenced by the social values and concerns of the time of these translations is open to interpretation. How often we are tempted to transpose our own value system onto the world we are studying? What must be borne in mind is that in this case we are constantly creating an interpretation and a reality based on words from an age to which we have no real documentary evidence. Words are all we have, no photographs, no paintings, nor pictures to elaborate viewpoints, or accentuate points of argument. My assertion is that based on what we have in society today, a learned behaviour pattern, a sanction giving certain norms an acceptability in wider society, even a blueprint in ‘living law’ that continues to formulate and practise a custom, often chopping and changing to suit the context and time frame within which it functions, but dowry continues as a major determinant in marriage. Surely this resilience is itself worthy of note as a clue to its inherently powerful nature? In the following sections we sift through further evidence to understand this nature.

Returning to the modern day situation as a reflection of history and an anthropological process we can turn to recent studies on what is, and has been, said about dowry and its nature. In some contemporary readings dowry *prestations* are often referred to as pre-mortem inheritance for daughters (see Tambiah, 1973: 59-169).²³² A

²³¹ As translated by Menski (1984), from Zimmer (1879: 315).

²³² For a relevant discussion on Tambiah’s controversial anthropological approach to dowry as pre-mortem inheritance and academic feedback see Hershman, (1981: 245), Agarwal (1998: 135-8), Oldenburg (2002:

large dowry is often used as a justification to cut off or deny a daughter's share in the natal property, so as to allow the ancestral home to remain undivided. Girls often willingly, or at times reluctantly, sign away their inheritance rights to their brothers, male cousins or an uncle or other male relatives, with this attitude imposed on them. It is believed that a girl will cause conflict in her family by asking for a share of her rightful inheritance (Basu, 2001b: 117). Contesting or challenging one's natal family in a court of law is an uncomfortable step to take (Basu, 2001b: 2; 41-42). Women are often led to believe that any confrontation to secure their rights will lead to an annulment of their emotional security in their natal home; all the time being aware of the fact that they threaten the sanctity and harmony of the Hindu Undivided Family (Basu, 2001b: 128-29). Kolenda's (1984) study ably demonstrates the very real severance of natal ties on marriage and the direct link to dowry in two disparate Hindu communities. According to this study natal groups that consider the girl's marriage as "losing" her to another community sever all natal connections and pack their daughters off with a dowry, and little subsequent inheritance. Whereas those communities that have no such belief of having lost daughters to another group through marriage, and who consequently conceptualise the couple as 'belonging' to both families tend to make gifts of land and property to their girls. They even convince their daughters to consider living close to the natal home. Kolenda's (1984: 98-112) findings suggest that the Hindu marriage rites and ceremonies of *kanya dan* that permanently change her name and caste (including her funerary affiliations), symbolise this vivid severance of natal ties. Thus in these communities the property is considered the brother's as he remains "in" the family and is not "lost" through marriage.

In keeping with such findings as Kolenda (1984) and Basu (2001b) it has been argued that dowry can be conceptually constructed as a daughters' inheritance. If so conceptualised, this property may be considered empowering to the daughter, therefore granting her a dowry may ensure the well-being of a newly wed bride. In reality none of these concepts seem to have worked. In fact the opposite is true; giving an adequate dowry invites extortionist claims. Besides, how much is enough? Further it is important

23). Also in her book analysing the patriarchal roots of the dowry system in India, Hooja (1969) directly contradicts many of Goody and Tambiah's major assertions. Hershman in his discussion on marriage customs in Punjab, is in agreement with Tambiah on an important characteristic of dowry, which must be noted here: "the re-circulation of dowry, such as a woman giving her gold to her husband's sister at the time of her wedding (or having it taken from her) is something considered shameful and performed in *sub rosa* fashion" (1981: 245). See also Dumont (1959: 520-1; 1966: 121).

to note that women do not have a right to the marital property should there be any dispute. They are shuffled between their natal and marital families in terms of property ownership. In practice women are not allowed to enjoy the right to property which they have been accorded in text. There is therefore a view among modernists that if a woman's right to the marital home is secured, her position will be clear and valued (Jaising, 2000; 14-15). As a matter of fact this may undermine her father-in-law/husband's authority and ownership creating another area of conflict in the current context. Discussions on what makes up a dowry have been problematic, as no clear consensus has been reached, specifically with regard to ownership of the 'gifts' that change hands. Furthermore, these gifts do not cease at the wedding, they continue throughout the married life of the couple, and gifts are presented not only to the bride but also to her affinal family.

4.2 Dowry as a customary norm

How is a customary norm born? Does it evolve unaided, naturally or is it established through long and studied practice of peer groups, *sadācāra*? That in the practice and emulation of dowry marriage as a model we have an established and recognisable pattern is not under dispute. Whether it is the intent of a society to recreate a potentially harmful pact is what is under question. What if dowry inherently does not imply harm, but in fact accrues spiritual and of course material credit and merit? Now if we shift the lens to examine dowry as a practice without the weighted preconceptions of it being 'bad' custom we may have an interesting, even enlightening outcome. I address in particular the assertion of an activist, Madhu Kishwar, who has battled with the very nature and expression of dowry and how we as women must treat it.²³³ Kishwar's (1986: 2) assertion, early in her attempt to address dowry problems on the ground in the Indian capital, stresses the need to unpack the understanding of this custom in order to meaningfully tackle it: "Until we understand how dowry actually works we will not be able to do anything about it".

²³³ See all of Kishwar's (1984; 1987; 1989; 1990; 1994a, 1994b) many arguments for and against dowry, and her battle with her own staunchly held views particularly in "Rethinking Dowry Boycott" (1988) for a clearer picture of how activism tries to address social problems (Kishwar, 1994b: 5-17).

The evidence of dowry present in the literary sources available on Hindu marriage negotiations²³⁴ yields clues to the nature of the practice of dowry prestations as a custom considered exemplary by a socially elite group. The argument here is that dowry prestations and related practices evolved over time as a representation of higher caste and class status, implying better social position and standards of living. This association remains to this day where groups that did not traditionally practice dowry marriages reject their own customs, favouring and incorporating the seemingly financially viable custom of dowry, which gives them access to higher class status, more prized than caste in today's market economy.

In order for a practice to become normative it must follow a certain pattern of socialisation. The clues to this inherent and diligent socialisation have been embedded in the behaviour at marriage and during the negotiations surrounding marriages for millennia. The repetitiousness is itself evidence, and emphatically points our vision toward a clear desire to emulate what is considered best during a specific historical period, and perhaps because that is the practised, even safe path. In particular in a society so absorbed with its own perpetuation, the need was to find means to support 'good' unions, which brought forth 'good' progeny, which in turn perpetuated and ensured the survival of a way of life and philosophy. Interesting to note is the emphasis on the type and form of marriage repeatedly underlined as the best to ensure the safety of both ancestors and self. Let us examine how this process unfolds, in the various verses in the textual literature at hand.

For instance, from the above discussion it is evident that the physical appearance and the character (*caritra*) of bride and groom, especially the girl as referenced, to a much greater degree, were crucial especially in the approved forms of marriage, where they assume the status of ideals. We find sufficient evidence to assume that the amount of the dowry would have depended upon the qualities of the bride, according to the verse we have already noted from V . 23.11 and what it states. With regard to similar examples of the importance of the qualities of bride and groom to the type of union we have a host of verses. In what is considered the oldest, and perhaps most respected of the *S* *s* *Yajnavalkya* 1.55 stresses "virility", among other necessary "qualifications" for

²³⁴ See Fruzzetti's (1990: 32-33) observation of modern marriage negotiations, specifically as an area where customary norms are elaborated through adherence to set accepted behaviour, between the professional go between or *ghatak* and the families about to enter into the negotiations.

the groom. Another equally influential voice is recorded in *Naradas* XII.8, and further, at verse 19, which similarly underlines the purpose of marriage being procreation and therefore has strong injunctions laid down against impotence, thereby emphasising that an “incapacitated male was not competent to marry, as the chief intention of marriage was the procreation of children” (Chatterjee, 1974: 373).

As the following discussion in chapter five will highlight, there existed a clear notion that the type of marriage union effectively had implications on the qualities of the progeny born of that union. In chapter two we examined the intense preoccupation of Vedic society to perpetuate itself through “noble” lineages, this preoccupation consequently led to a marked emphasis on procreation as the basis for every marriage. This also implies that the quality of the progeny was crucial, and numerous texts cite the ideal *rtu* or women’s cycle, during which to approach one’s wife in order to procure ideal offspring. Therefore we see a clear relation drawn between external causes and the quality of children born.

The qualities of the bride and groom were carefully scrutinised so as to ascertain that the couple had ideal offspring, preferably sons.²³⁵ The bride of course came under greater scrutiny as she would perform the major biological and social function of rearing the child first in her womb and then in her husband’s home. *Manus* III.6-7 lists a set of families from which a bride *should not be* selected to ensure strong unions. This is clear evidence of enjoining certain behaviour in society. The commentators deduce eugenic justifications for this; as Chatterjee (1974: 372) observes specifically Medhatithi’s belief that “off springs [sic] of persons of bad pedigree are supposed to inherit bad elements”. Yama²³⁶ outlines a list of families similar to the ones outlined in the *Manus*, which “should be avoided”. The primary aim of this emphatic concern with “pedigree” according to Harita was to ensure “excellent quality of progeny [sic]”. Avoidance of certain lineage and insistence on the family-affiliation of the groom were meant to ensure that “...defects would not reappear in the children born” (Chatterjee,

²³⁵ Choosing ideal partners to produce, and procreate an ideal society was not unknown in other ancient societies. Records exist to suggest that the State encouraged the choosing of potential mates for soldiers in ancient Sparta to ascertain the quality of the offspring of such a union. Also, Spartan society is known to have gone to the length of abandoning deformed babies outside the city-state. See Kiernan’s (2007) *Blood and soil* for an elaboration on genocide and extermination from Sparta to Darfur.

²³⁶ *Samskaraprakasa* 588, cited by Chatterjee (1974: 372).

1974; 373). The *s* literature enumerates the qualities inherited by the children born of each type of marriage. The reward for each form of marriage is measured in the number of ancestors that the son born of that particular marriage form might succeed in freeing from hell. Compared to such detail, the relatively sparse information about dowry in these texts indicates either lesser importance given to financial arrangements, or may suggest that dowry was just 'normal' practice; there are certainly no eugenic or other biological consequences.

The child born of the *Brahma* marriage is most highly prized in this sense, thereby emphasising the ideal status of this marriage as "he frees from guilt ten of the ancestors who came before him, ten later ancestors, and himself as the twenty-first" (Doniger, 1990: 47). The progeny of the first four forms of marriage are further blessed with longevity and beauty and are valued far above those born of the unacceptable forms. From the above we may deduce that the forms of marriage were elaborated to underline the importance of the role of the householder to produce perfect progeny who would carry forward perfect sacrificial rites. In order to be able to carry on these rites, however, considerable wealth was essential, to gain which it was necessary to idealise a form of marriage wherein the wealth moved into and not away from the husband's family.

An exploration of the *Brahma* versus the *Ās r a* form of marriage in text, and context is valuable at this juncture, as it raises both questions and clues about the expectations involved in marriage practices at ground level and how these in turn have shaped the powerful persistence of dowry within Hindu/Indian marriage. A detailed examination of the *Brahma* form of marriage and its subsequent codification as the legal form of marriage in the modern Hindu Marriage Act (1955) therefore underlies the discussion here. This will lead into the consequent displacement of other marriage prestations by dowry, among the indigenous communities in India, who have since been absorbed into the dominant cultural mass. An examination of bride-price marriage and its conception as *Ās r a*, that which is unacceptable, literally "out of tune" with a harmonious society render clues about the further conception of the ideal marriage payment. *Brahma* marriage is upheld as the exemplary form, as conceptualised it carries within it the sanction for dowry as the accompanying gift that goes with the 'more auspicious' *kanyadān* or the gift of the virgin.

These two forms of marriage, with specific reference to their connections to bride-price and dowry payments in the modern context express how dowry comes to be the major player in the modern context, and why? If one form is being given both ritual and social sanction, and merit over all the others, and particularly over the bride-price form, then it is clearly the preference of the elite group, who control the dissemination of knowledge, virtues, and social mores. They decide, even divine, what is accepted and therefore acceptable. This conceptualisation of marriage at a pan-Indian level in the explicit terms of *kanyadān* as the best form of marriage, and the best form of gift highlights the emphatic idealisation of dowry marriage in the current context (Raheja, 1988: 121).

As a matter of fact there is evidence to suggest that acts of giving and receiving carry clear messages, coded within the very act of the custom they denote. Moreover, power equations are set and controlled between kin-groups and this is what foretells the future for the survival of dowry as a practice. The theory of *dānadharma* or gift-giving particularly relevant here considers Mauss's (1990) conceptual examination of marriage prestations.²³⁷ A newer reading of Mauss for contemporary use suggests "[a] gift that does nothing to enhance solidarity is a contradiction" (Douglas, 1990: vii). In terms of Sanskritisation, examining dowry as a construct and symbol of the traditional *Brahmanical* patriarchy is informative. Hindu marriage is also discussed in the same vein to highlight the process of Sanskritisation as it gradually displaces other marriage transactions, both in the current Hindu and the non-Hindu context. Hindu marriage is the ceremonial backdrop within which the drama of dowry negotiations unfolds. References from the texts in translation trace the development of dowry into an ideal marriage payment above others in the *dhar aś ās ra* literature.

In a lucid article replete with *śāś r c* references, Derrett (1984: 181) claims in no uncertain terms that "[d]owry does figure in the *śāś ra*, and has done so for a very long time." Interestingly his observation that the practice is dealt with in a "...sly fashion, half-heartedly, shamefacedly" highlights the conceptual underpinning of this intensely

²³⁷ Marcel Mauss's study although released in French between 1923-4, became more widely translated and available to academics and others in 1950. Therefore, in reference to the conceptual idea this date is used in the thesis. In the discussion of gift theory in this thesis two versions, or translations of Mauss are used. The more widely accepted of these two for social scientists is by Ian Cunnison (1970). However a more recent reading is relevant for a much changed world. Interestingly the very title is translated variously. Halls' (1990) version uses the phrase "form and reason for exchange" as opposed to the previous translation "form and function". This represents the shift in focus of our society from a more functional to one that attempts explanations, perhaps?

patriarchal construct. The findings in this thesis thus contradict Oldenburg's²³⁸ observation that dowry functioned as a safety-net for women and was a custom created by mothers to ensure their daughter's happiness in her marital home (2002: 24-25). This phenomenon may well be there as well, but there is a much wider system at play. The marriage negotiation usually takes place between the men of both families, assisted usually by professional matchmakers or *ghataks* (Inden, 1976: 46; Fruzzetti, 1990: 32-34). Even when the father of the girl is not present it is crucial for a male guardian to represent her to the groom's family. According to Madan (1975: 231) "Once the negotiations for a marriage have been successfully completed, it normally is in the home of the chosen wife-givers that the decision to establish a union is formally and publicly taken by the two parties". Although there are exceptions, this appears to be the rule to date.

Dowry as experienced elsewhere functions as an accumulation of wealth for the joint family of the bride takers, as Derrett points out, the "family's chest" (1984: 188).²³⁹ Both Hershman and Agarwal refer to dowry prestations constituting a "circulating" pool or fund accessed by members of the husband's family and clan (Hershman, 1981: 244; Agarwal, 1998: 137). All the references within the *dharmaśāstra* texts and their adjunct commentaries cited by Derrett tie in neatly with my own findings (Bhattacharya, 1999) of the concept of dowry in early Vedic literature, highlighting a clear line of continuity with the traditional *Brahmanical* patriarchy.

The theory of the gift, or *dānadharma*, as investigated by Marcel Mauss (1970; 1990) from the *dharmaśāstra* literature, lends further valuable insights into the behaviour incumbent on the givers and receivers of gifts. This theory juxtaposed with the gift-giving patterns and associated status games ingrained in the North Indian *jajmani* system was analysed by Raheja (1988: 118). The exchange and behaviour patterns associated with dowry define the formation of ideals to be followed through history. The auspiciousness and inauspiciousness of the transactions will also be discussed with reference to Raheja's argument that "The well-being and auspiciousness of the givers of

²³⁸ It appears that Oldenburg (2002: 4) did not examine the abundant evidence for dowry analysed by expert legal theoreticians like L. Sternbach (1965) and Derrett (1984), or Inden (1976), although she does refer to his 1990 study on the political construction of Indian society, and imagining India. Further in spite of referring to Fruzzetti's (1982) findings in Bengal, Oldenburg seems to miss the point completely.

²³⁹ See also Rheubottom (1980: 221), for similar conceptions of family wealth in Yugoslav Macedonia. Interestingly, in this context of a non-Indian community it is the unique quality of the gifts stressed above actual monetary value in most cases, similar to that of the Bengali 'totto' concept discussed below in chapter 5.

the bride are only assured when the marriage is a *kanyadān*, an unreciprocated gifting away of the daughter”. This aspect of the reciprocity and the problem highlighting the preoccupation of families to marry off daughters is uncovered by Raheja and lends valuable insights into the further conceptualisation of dowry as a necessary accompaniment with the gift of the bride. Also noteworthy here is Amison’s (2002: 79) lucid observation on the particularistic dimensions of giving in ancient India: “‘Giving’ confers power on the giver; ‘receiving’ is a sometimes shameful act that can put the receiver in the power of the giver”. This aspect of a complex power equation linked to the giving and receiving of dowry will be further underlined below.

An almost universal assumption in the study of marriage and affinal prestations highlights the role of hierarchy as a dominant feature structuring all relationship between wife-givers and wife-receivers. There has been some question regarding when this ranking begins to exert influence: before the marriage or as a consequence of it? Despite these minor debates the pervasiveness of this ideological construct has not been sufficiently queried.²⁴⁰ Both Dumont (1966) and Vatuk (1975) argue and demonstrate that crucial aspects of North Indian kinship are articulated through various kinds of marriage prestations. Dumont first highlighted the manner in which relatives of at least two successive generations are identified by virtue of their roles as wife-receivers and wife-givers or bride-bearers. The bride’s family merely seem to bear the girl till she is of marriageable age, and the groom-givers have the higher gift to give.

Such analyses further demonstrate the importance of the “alliance” aspects of affinal relationships characterising the particular valuation and elaboration of the enduring relationship between wife-givers and wife-receivers. However, applying their findings to North Indian society at large is problematic. Both Dumont and Vatuk identified hierarchical elements in the affinal relationship among the Uttar Pradesh *Brahmana* castes studied by them, and they have translated marriage and post-marriage prestations in terms of this overarching hierarchy. They believe that gifts are given precisely because of the superiority of the wife-receivers over wife-givers.

Raheja argues that their study has two main limitations. Firstly, that it does not account for the wider cultural meaning associated with kinship and prestations and secondly, that the ritual contexts of the prestations and their linguistic aspects of the gift-

²⁴⁰ See for more detail Vatuk (1975: 159) and Raheja (1988: 20).

giving circumstances have not been adequately specified. She argues instead that “[m]ost important... is that many of these prestations are *dān*, and that as such they involve transfers of inauspiciousness in which it is the obligation of the wife-receiving people to act as recipients for the well-being of those who are related to them as wife-givers” (1988: 119). Raheja points out that in the Gujar community she studied they avoid marriages of exchange, since these suggest the “taking for a price” of a bride, which then contravenes the fundamental purposes of *dān*, since inauspiciousness can never be transferred in a reciprocated exchange. Raheja’s study highlights how the groom like the “*Brahmans*, Barbers, and Sweepers, must “spread out the begging bag” (*jholi pasarna*) to accept *dān* and that it is his obligation to do so. Interestingly in both affinal and intercaste prestations, the emphasis is on the ritual centrality of the one who gives *dān* rather than his hierarchical position with regard to the recipient. Crucially, Raheja’s (1995: 26) findings in Pahansu reflect that women in this society perceived themselves as “little” in comparison to the boy’s people, who are considered “big” in terms of status.²⁴¹ This assertion highlights the obligatory nature of the transactions that take place at marriage and highlights the unequal balance of power between the two groups. These concepts act on the pattern and behaviour of the gift givers.

Emphatic in their influence are the continuing oral and linguistic tradition of communities, which uphold dowry, reinforcing the advocacy of the custom. Songs, lullabies, proverbs and sayings perpetuate the acceptance of this custom, contributing to the general belief that indeed dowry is, and has been, a socially sanctioned necessary part of good or ideal Hindu marriage.²⁴²

Groups that favoured very different forms of wedding transactions or prestations to begin with have swapped their own practices or incorporated their own versions of dowry. These groups that practised bride-price, or even where there was supposed egalitarianism between wife-givers and wife-takers, have abandoned their previous customary behaviour in favour of dowry marriages. Should we account for the widespread acceptance of dowry as a fall-out of Westernisation and inflation alone? Are

²⁴¹ For an incisive analysis of Raheja’s findings in terms of Punjab and the deconstruction of hypergamy see Oldenburg (2002: 37-39).

²⁴² Dr Tej Purewal, University of Manchester, presented an incisive analysis of wedding songs underlining the value of dowries to a happy married life from Punjab in her paper entitled “A Matter of Choice? Engagements with son preference and sex selection in the South Asian diaspora and beyond” on 5 January 2003, at the Sixth International Conference on Dowry and Bride-burning and Son Preference in India, held at New Delhi.

there elements of Srinivas' (1952) conceptual Sanskritisation involved as well? What are the elements at play here? As Oldenburg suggests, is the colonial British administration to be held solely responsible for the creation or corruption of the custom of dowry?

The belief is that if dowry is not given something terrible may happen. In fact deaths are likely to occur when, apart from other things, there has been inadequate dowry, or at least that is sometimes the justification given for murders. These sayings and songs form the unwritten 'codes' which collectively represent custom and will be used to play off the textual references that support it. These trends lend clear insight into the social sanction accorded to dowry as a customary norm.

Succinctly: Other forms of marriage prestations have been displaced in favour of dowry, which is currently established as the dominant model of marriage prestations in India. This shift is adequately documented in anthropological data and appears to have occurred along the lines of Sanskritisation, whereby lower castes and classes emulate and appropriate the symbols and practices of the highest caste in order to better their own status. Further, this shows a custom based on ancient textual sources has claimed precedence over the rules and the text of the official law.

4.3 Hypergamy and its impact on the nature of dowry

The structural relevance of hypergamy to dowry as a customary norm is evaluated in the following section, calculating evidence from early British anthropological data (Risely, 1891; Prinsep, 1899; Ibbetson, 1916; Baines, 1921; Rivers, 1921; Hutton, 1961) alongside the academic thrust of the understanding of hypergamy as a feature of Indian marriages. This is a crucial aspect of dowry under consideration here, in terms of its association with hypergamy, a ranked relationship between wife-receivers and wife-givers. In anthropological literature we come across two marriage forms known as hypergamy and hypogamy, one of which is particularly pertinent to this discussion. Hypergamy involves the gift of a daughter along with the gift of wealth or a "dowry" to a groom of higher rank (Rivers, 1921: 9-13; Inden, 1976: 98). This notion of rank encompasses a complex mix of markers, socio-economic in particular and also in the case of ancient India, one of high ritual status directly associated with rank. Hypogamy, conversely involves a marriage where the gift of a daughter to a groom of lower rank is accompanied by wealth given to the bride's father. Crucial to my thesis is the notion of trading wealth for status, as a direct result of marriage prestations and the possibility of

movement by this act of giving and taking in the minds of both low and high grades of clans as a matter of prestige. To set the stage for the peculiarity of hypergamy and its relationship to dowry and Kulinism as it was perceived by the first ethnographers who encountered it, it is useful to note some of the ongoing debate in London society in the early part of the nineteenth century. This discussion highlights once more the need to understand customs in their own given context. Further, the discussion here must always make room for the ongoing evidence of what popular beliefs of the period held, by way of accounting for an academic and wider socially aware form of *sadācāra*. Presented here is an ongoing debate in the editorial pages that troubled the then Editor of the London Times enough to finally call upon George Bernard Shaw to summarise and therefore draw a line under the entire argument. There is a curious to and fro between viewpoints which highlights also the nature of the argument undertaken here. The entire debate begins with a piece by Sir Henry Cotton on Kulin polygamy and its effects, where Cotton claims that “so-called child marriages among the educated class are now the rarest occurrence, and polygamy among Kulin *Brahmanas* is absolutely non-existent...The practise had died before I went to India”.²⁴³ An informed discussion then ensued, involving the editorial department to clarify their own position. The paper makes room for the heated debate which then continued for several months. Details of this would go too far here.

Worth specific mention here is, however, another response linked to the ongoing debate in the London Times, about the wide recognition of a father’s obligations toward gifting his daughter herself and the enjoinder in the customs of the people with regard to dowry, and indeed “buying” a husband for her:

Sir, - I desire to offer my experience of Kulin Polygamy in contradiction of Sir Henry Cotton’s statement. I entered the Bengal Civil Service about 12 years before Sir H. Cotton, and my service in Bengal overlapped his in its termination.

In 1866 the Government of Bengal appointed a committee to inquire into and report on Kulin Polygamy. It was thus moved by a learned *Brahmana* Pundit, at whose instance a few years before the legislature had passed the Hindu Widows Remarriage Act. Sir Charles Hobhouse, who is still alive, was president of that committee, and I was a member and its secretary. Our inquiries showed that Kulin Polygamy was very prevalent in Bengal and that there were instances of *Brahmanas* having nearly 100 wives, many of whom they had never seen since their marriage with them as girls. That was about the year before Sir H.Cotton came to Bengal. His statement therefore, that “in my personal experience...polygamy” shows singular ignorance of the social habits and customs of the country amongst the people of which he so long lived. His experience is

²⁴³ *The Times*, Tuesday, September 24, 1907, p. 10.

evidently derived from association with Bengalis whose Western education no doubt may have tended to induce them to abandon it. But it would not be to such men that this pernicious system would have much attraction. Profit in a pecuniary sense, and not sensuality, is its stronghold. *The father of a girl is obliged by Hindu law and the custom of the country to marry her before she attains puberty; she must marry in her own caste; and he has to buy a suitable husband for her.* Kulin Polygamy, it can be easily understood, appeals to *Brahmanas* of the mendicant and priestly classes of small means. Education may have done much to reduce its sphere; but education has not reached such classes, and obviously they will be last to come within its influence.

I do not desire to attempt to discuss or explain at length the marriage system among the Hindus in Bengal; but I would point out that though education may have done something to mitigate its evils, it cannot claim to have done much to reduce the rates payable in the marriage market. The usual rate demanded by one who has taken a degree of Bachelor of Laws in the Calcutta University is, I was credibly informed not many years ago, Rs.10,000, or nearly £700. It may be asked why does not the congress which professes to act as a body anxious to reform all matters to the benefit of India apply itself to such social matters of the highest importance? Why does it not commence work at home before it stirs up matters of political controversy? The answer which suggests itself is obvious. Because it does not suit the aims of its leaders. Alas! That should be so.

September 27 H.T.Prinsep²⁴⁴
[emphasis added]

This debate highlights two issues inextricably linked to the discussion of hypergamy and dowry: how a custom holds sway over the customary conscience of an entire society, in spite of it being uncomfortable, and an unmitigated link to wealth and status play.

To link this with the present argument, the work of Marcel Mauss and Louis Dumont in the anthropological and sociological fields of marriage exchange is important. In their study of marital exchange behaviour patterns a significant trend was noted. In fact the very term hypergamy, by which superior lineage is sought through marriage, was coined in order to accommodate this peculiar upwardly conscious move made through a marriage alliance. Until then it had been referred to as Kulinism, or in an ancient context as *pratiloma* marriage alliances, contracted for reasons of superiority as Dumont found (1966: 301).²⁴⁵ Both Dumont and Mauss note the peculiarity of Hindu families that are anxious to maintain and project a clear line of gift giving, which in turn supports an ongoing relationship between generations. All this behaviour seems implied in marriage negotiations during and before the act of marriage itself. Though so far in historical research not many links have been found between specific marriage customs linked to and concerned with dowry, and the ancient and medieval texts seem to proscribe such behaviour, I am now confident that throughout the textual material there is constant

²⁴⁴ H.T. Prinsep in *The Times*, September 27, 1907, p. 4.

²⁴⁵ See below a description of the *pratiloma* and *anuloma* marriages as researched by Dumont.

reference to and confirmation of one type of marriage as being the ideal form.²⁴⁶ This is the *Brahma* marriage. Several *grhyasūtra* texts attest this. In fact there is reference to the need to spend and lavish gold, extremely relevant in terms of auspiciousness and purity; Gonda (1991: 6-8; 88-89) directly linked this to the desire for prosperity and strengthening lineage through the birth of sons. There is also the clear acknowledgement that a payment of sorts exchanges hands at the wooing of a girl, or at the arranging of the marriage, and this too is made in gold. Gonda (1991: 104) highlights the behaviour at the wooing:

The man who wishes to marry sends wooers to the girl's father who take flowers, fruits, barley and a pot of water, say three times "here I am, sir!", ask the girl in marriage and—when both sides approve—touch a vessel in which have been put flowers, fried grain, fruits, barley, and gold whilst pronouncing appropriate *mantras* (SG. 1, 6, 1 ff).²⁴⁷

Further, Gonda (1977: 606) in his trawl through the ritual *sūtras* finds and highlights several supporting statements which signify that gold was integral to the *Brahma* form of marriage. This is clearly followed through also in Rgveda X.85, the marriage hymn; and in other lesser *grhyasūtras* linked to the Rgveda. More recently Ronald Inden finds that in order to exchange and maintain a higher rank in Bengali society hypergamy in the form of *Brahma* marriage was preferential in the middle period. He quotes Ibbetson (1916: 23-24) who first used the term hypergamy with reference to India and its peculiar marriage practice: "They may also be referred to as two laws, which I shall call the laws of isogamy and hypergamy. By isogamy or the law of equal marriage, I mean the rule which arranges the local tribes in a scale of social standing and forbids the parent to give his daughter to a man of any tribe which stands lower than his own. By hypergamy or the law of unequal superior marriage, I mean the rule which compels him to wed his daughter with a member of a tribe which shall be actually superior in rank to his own. In both cases a man usually does not scruple to take his wife or at any rate his second wife from a tribe of inferior standing".

The word hypergamy was introduced at the end of the last century to designate a different pattern which is sometimes encountered in the north of India, although it is not

²⁴⁶ Dumont's footnote on the reasoning behind the list questions how the authors of these texts are justifying one marriage form as better than the other and clearly coincides with the view in this thesis that *sadācāra* and custom is enjoined in the ancient material.

²⁴⁷ See also Gonda's (1991: 223) observations about the possible use of gold with reference to the marriage verses on RV X.85.

universal there.²⁴⁸ Blunt (Dumont, 1966:116) says of Uttar Pradesh: ‘Indeed amongst all Hindus there is probably a tendency towards hypergamy.’ And Dumont (1966: 116-117) himself observed in the Gorakhpur district an illuminating trend “*that even among castes who do not actually practice it, hypergamy is influential as a conscious model, a language*” [emphasis added]. This behaviour, to be aware of a conscious model of marriage, is what the underlying argument in my thesis stresses. Further to identify hypergamy as *Brahma* marriage clearly, and to link this to the ideal model of dowry marriage (Srinivas, 1984: 12), as the discussion below will demonstrate.

In this pattern of marriage alliances, a slight status difference, a slight inferiority of the wife’s family in relation to the husband’s, is considered normal and does not in the least affect the offspring’s status. Of course this relates to the principal marriage, and in no way excludes endogamy. It is because in such a marriage the daughter marries into a superior family (she ‘marries up’) that it has rightly or wrongly, been called ‘hyper’ gamous. According to Dumont (1966) three points are worth noting:

- (I) the term ‘hypergamous’ is not used to designate all marriages or unions in which there is a status difference in the direction indicated, but more precisely the fact that such a difference is, within certain limits, neutralised normatively in the first marriage. The term even implies if not an obligation, then at least a strong recommendation for the girl’s parents to find her a superior partner.
- (II) As the woman is in general considered inferior to the man, the pattern would seem natural to the people concerned.
- (III) Most notably, this pattern of marriage alliances correlates most closely with the *Brahmanic*-classical, as well as its universal ideology of a girl’s marriage being the ‘gift of a maiden’ (*kanya dan*).

Dumont’s discussion is further informative to my thesis in its analysis of the importance of the gift in general terms in Indian society past and present, and more specifically to the material relevance of the gift of a girl. According to Dumont (1966: 118), the gift in general terms is an inherently meritorious action. The giver acquires merit by the gift of materials of no value for spiritual goods. However, the ‘gift of a maiden’ is a special form

²⁴⁸ See for more detail Dumont, (1966:116-119). Blunt as cited by Dumont (1966: 300) observed these trends in Uttar Pradesh specifically. While for the Maratha country, which in this respect seems to represent the transition from the north (hypergamy) to the south (cross-cousin marriage) see Karve (1965: 156).

of gift, even *sampradan* or a perfect gift. This is meritorious on condition that no payment is received for the girl. This squares with the pattern of the gift discussed by Dumont: one gives a daughter and goods to a superior in exchange, not in this case for spiritual merits, but for something similar, namely the prestige or consideration which results from intermarriage with him.

Interestingly, Risely and Wise were the first ethnographers in Bengal to note Ibbetson's terms in describing the correlation between marriage patterns and clan ranking agenda (Hutton, 1961: 53-54). Dumont almost shouts his disdain from the page when he observes the "lack of understanding on the part of modern Indian authors" (1966: 282), and goes on to quote several contemporary sources, particularly K. M. Kapadia, whose efforts in *Marriage and Family in India* are referred to as studious work (Dumont, 1966: 301).

Following Blunt's (1931: 70) analysis of hypergamy among modern academics, Tambiah in his examination of marriage prestations in South Asia assumes that hypergamy is ideologically crucial to the conception of marriage, particularly in the context of the symbolic *kanyadān*,²⁴⁹ or gift of the girl and in the dowry accompanying this. He believes this status superiority of wife-receivers over wife-givers operates in relation to his argument that dowry represents "female property or female right to property which is transferred at a woman's marriage as a sort of pre-mortem inheritance" (Tambiah, 1973: 64). Raheja's examination of marriage prestations in Pahansu in north India clearly demonstrates not only that the hypergamous ethos may be contextually distinct from the symbolic *kanya dān*, but most importantly that Tambiah's belief of dowry as pre-mortem inheritance does not tie in with linguistic and ritual data concerning these prestations. If anything, this appears to confirm that there are different types of dowry transactions at work throughout South Asia. Raheja's investigation shows that givers and receivers are ranked only with respect to each other and not necessarily by caste or clan groupings and that too only with reference to a specific marriage (1988: 120). This discussion clearly encapsulates the plurality of marriage prestations and

²⁴⁹ Oldenburg (2002: 25) observes the "ideology of *kanyadān*" at play in the belief system of the Punjabi community. This belief system permeates a much wider pan-Indian community in reality.

highlights the ongoing tensions between the groups involved in the give and take process, which is crucial to the wider arguments made in this thesis.²⁵⁰

Here therefore is the evidence that not only was the most desired form of marriage alliance the *Brahma* form, which involves the *kanya dān*; or gift of the maiden. More importantly, this evidence is propped up with demands and requirements for the father or brother, or other responsible male relative to furnish gold, with and for the husband's family to make the girl more desirable to be accepted. In explanation of this behaviour we have the complex, and unique gift-giving behaviour minutely researched and referenced by both Dumont, in support of his caste study and its dynamics; and also by Mauss in terms of the singularly significant sanctions and norms that go with gifts. The clear understanding that emerges from even a cursory reading of this material is that first and foremost "there is no free gift" as Mary Douglas (1990: vii-xviii) emphasizes, that even charity is not without repercussions and forms a relationship between the donor and receivers. Therefore when a gift exchanges hands there is merit associated and a clear blueprint laid out by the domestic ritual manuals, whereby certain behaviour is desired and better. And that is *sadācāra*.

Even the list of acceptable marriages is itself a form of textualised *sadācāra* which is enjoining the preference of marriage by gift rather than marriage by purchase. Dumont highlights the ideology at play when he mentions how the *Brahmanical* authors are giving voice to their own preferences, to ensure that that practice will then become a wider spread custom. We have further evidence from the entire sub-continent and further afield, that the preferred model is the dowry marriage. I lay out the evidence within the argument here that dowry marriage as we see it today is clearly a reflection, if not a mutation of the most ritually meritorious marriage or the *Brahma* marriage, as was the intention of the *śāstrakars*.

A crucial thought here is to constantly be aware of there being no golden beginnings. But that also means that dowry may not in itself be bad. It is simply complex. What we need is a clearer study of various types of dowry marriage. The ones that go bad, and the ones that survive. Also we need a cross-section of these from different communities.

²⁵⁰ See also Menski (1984: 556) in an associated context relating to the priest, especially for an examination of the complex permutations involved in gift-giving to the priest, *dakshina* as opposed to *dān*.

To elaborate the notion that dowry as a custom is not ‘bad’ or *dr ācāra*; but that the practice related to it may be problematic we have some ideas presented in similar research issues in the past. For instance the search for a better understanding of law, its development and evolutionary precepts by Sir Henry Sumner Maine highlight the difficulty of breaking free of positivist ideals. It seems that coupling Maine’s legal, ideological and philosophic belief that law is not per se found in positivist ideals—and Nietzsche’s refuting the notion of “golden beginnings” (Rabinow, 1984); we may need to reconsider, to even “go back” to seriously imagine that evolution of a thought might *not* always flow chronologically getting better, or more precise or more just.

What seems evident is the hypergamous behaviour at play, where the inherent inferiority of the bride’s family and kin in comparison with the bride-groom’s is now very much at play in society. These behavioural subtleties and the more obvious scorn by one set of kin for the other, as displayed in marriage ceremonial rituals and even through communal games etc. underlie the deeper rooted gift exchange pattern that has been in place for a long time. The astonishing similarities that may be noted in the way dowry is demanded, and the insistence often of the father of the bride that it is his duty to ‘bedeck her suitably’ to meet ably with that demand are all clues to the inter-play and competition between wife-takers and wife-givers in terms of superiority and maintaining this power relation. Neither group wants to be beholden to the other, or to be in the power, as it were, of the other one. This therefore becomes a tussle to stay one step ahead or one step on top in terms of status. Mindsets are minutely influenced by these behaviours; as much as people pay lip-service to the anti-dowry campaign enacted and today even championed by the state, personal behaviour has not really changed. Gifts must exchange hands when a bride is taken and given at a marriage ceremony. The harmony of power tilting one way or the other must be maintained. Fascinatingly all this is supported by clear recommendations within the textual material of both types; not as previously thought by being absent, but by being very much present.

Maine mentions “immemorial unwritten tradition” (1986: 1) and how its presence in the field of ancient Roman law distinguished it from the more positivist leanings of ancient English legal development. His recognition of this phenomenon is crucial to the argument here. We can easily equate the notion of *sadācāra* to that of “unwritten tradition” to make comparisons in a wider international context. At the end of the nineteenth century, Maine’s observations drew attention to the lack of a philological and

more complete analysis of the Sanskrit literature, arguing that when seeking to understand the early development of law in society and jural phenomena “our best sources of knowledge” continue to be Roman or Hellenic (1986: 2). In over a hundred years little has changed in this regard. Much research and even pertinent fieldwork has been added during this period. Numerous attempts have been made to give what for lack of better nomenclature continues to be called “Hindu” law, a place on the world’s legal stage, but to little avail. Essentially any ‘other’ systems of law remain on the outside, despite the valiant efforts of Prof. Derrett and now Prof. Menski (2003). For the present, concepts and notions like *sadācāra*; although not unique to Indian society, continue to fall outside the precept of wider international society when considering varying sources of law because it does not quite fit with the understanding of European models of behaviour; particularly with reference to *sadācāra* as dowry and dowry as *sadācāra*.

In the Indian mindset, pre-conditioned by the national agenda to appear Gandhian and therefore non-violent, non-greedy etc., to accept dowry as a determinant and player in Hindu/Indian marriages is an uncomfortable admission. And further, dowry death can be seen as almost natural to the way in which an unwanted gift is dealt with (White 1987: 552). It appears that most of the modern literature and the attitudes within society as reflective of that literature, cannot quite accept that dowry has been a crucial, if not primary trademark, both literally and otherwise, of Hindu Indian marriage. While the older textual material in and of itself reflects the injunctions or *vidhana* of following the ideal model of marriage with dowry, as hazily described in these ancient texts, if we examine the later *sūtra* literature, this evidence has been denied, perhaps due to a growing level of discomfort. Although it may seem simplistic, the anthropologists whose efforts were focused on India were primarily seeking to find reasons for criticising the divergent, even deviant level of society and civilisation.²⁵¹ Therefore we have a situation where, defensively, the Indian intelligentsia almost conspire to keep certain forms of knowledge about their own social processes away from outside scrutiny. Convenient translations are not errors, but much deliberate omission occurs. *Kanya dān*, for example, is ultimately propitious, but is always made with the gift of wealth, albeit depending on

²⁵¹ For instance the justification for the initial translation of the *gveda* was to prove its inferiority in the most democratic of ways in comparison to the Bible, thereby encouraging conversions to the superior religion of the west (Keay, 1981: 38).

the ability of the father of the bride. Further, the burden on that father is very real. White (1987: 554) notes:

...Perhaps the most oppressive practice of gift giving in Hinduism, likewise representative of an aspect of caste or subcaste behavior, (sic) is the system of exchanges between a bride's family and a groom's family, sometimes observed for a number of years both before and after the marriage proper. The prevailing custom places the burden upon the bride's family, and the demands are so excessive that responsible parents in the poorer classes are frequently forced into penury to provide a daughter with a husband. It is not unheard of for a father to commit suicide so that his insurance money can be used to pay off the resulting indebtedness.

Wealth has been a major preoccupation of Hindu society, with various textual references underlining the right and proper use of wealth, its status and ritual quality etc. (Gonda, 1991; Gupta, 1987). In fact, Gupta's (1987: 41) analysis of the mythology of the Vedas in terms of materialism is worthy of note for the present purpose:

Religion...did not originate with a revelation of any divine or spiritual reality, but with man's consciousness of the powers that be to be vitally affecting human life. To the Vedic Indian, life in this world was the dearest most valuable thing. Religion...is a means of achieving this mundane value or goal...The will to live, positively aiming at material prosperity and negatively aiming at destruction of anything that stands in the way of enjoyment of life, is very prominent in the Vedic prayers and sacrifices.

That materialism may be an aim of the mostly mystically interpreted worldview of the early writings is important to the discussion of a preoccupation with gathering wealth through the practice of giving and accepting dowry.²⁵² These views provide insights into the conceptualisation of status and power equations based on wealth. This conceptual leaning forms the canvas on which the economic aspect of dowry is painted. Dowry and related prestations, as noted earlier, is certainly not a practice unique to Indian society. The dowry chest figures prominently in most cultures (Rheubottom, 1980: 224).

Crucial to the present discussion is the significance of dowry to the wife-givers and the wife-takers, respectively. How do these groups view this transaction? What does it symbolise to the two groups and indeed to the marrying couple? This is where we come up against the issue of dowry demands. How is it that the wife-givers find themselves in a

²⁵² On similar studies preceding Uma Gupta's work focussing on notions of materialism during Vedic times see Shastri (1957) or Lefever (1935). More straightforward theses in this regard are Edwards's (1924) *The Philosophy of Religion* or Huxley's (1957) *Religion without Revelation*.

position of vulnerability when marriage negotiations begin? Why do they accept the servility incumbent on them? Is this representative of hypergamous unions? Has wealth replaced ritual purity?

A major effect of hypergamy is the status asymmetry between affinal groups, as stated above, the boy's kin being regarded as superior to that of the girl. The latter improve their status through marriage, while the former secure cash, jewellery, expensive clothing, furniture and other consumer goods. Marriot (1955: 112) points out:

Behind this organization of marriage is the feeling that one's daughter and sister at marriage become the helpless possession of an alien kinship group. To secure her good treatment, lavish hospitality must be offered and gifts made to her husband's family throughout life. The economic effects of this patterning of marriage are considerable. Not only marriage and other expenses are kept high, but quantities of goods follow the women in later years by the same non-rational path.

Several field studies corroborate these findings and will be employed in the present inquiry; there is a constant tussle in the social field creating newer dimensions to old customs.²⁵³ This chapter in particular examines the changing relevance of dowry as it changes hands from one family to the other. Varied components of dowry have been identified as common to most societies across the globe (Rheubottom, 1980: 223). The trousseau takes precedence in most modern societies today, while the provisions made by the girl's family, especially her father, are emphatically underlined in Hindu and Indian conceptions of dowry.

Therefore, we may conclude the following from the discussion in this section: Crucially, Inden's (1976: 98-107) thesis states without a doubt that hypogamy and hypergamy as respectively represented by the *Brahma* and *Ās r a* forms of marriage are used to trade rank, or *Kula*. The gift of wealth is clearly preferred to go from the father of the bride to the groom givers, rather than the reverse. Further, wealth is part of worship. In the case of dowry this is particularly damning evidence, particularly as a counter point to those Gandhian and nationalist researchers who refused to look through an objective lens, saying that it was the 'pure' gift of the daughter that the *śās r kars* were enjoining, not in any way a justification for conspicuous consumption. Clearly the evidence of fieldwork in Bengal (Inden, 1976; Fruzetti, 1990) attests this as discussed in chapter 5.

²⁵³ See Holden, 2003; Hershman, 1981; Fruzetti, 1990; Raheja, 1988; Blunt, 1931; Dumont, 1966, Malhotra, 2002; Pocock, 1972; Van der Veen, 1972; Tambiah, 1973; Smith, 1987, Marriot, 1955.

Further Dumont's observation in his footnote as discussed above, highlights the rationale behind the eight forms of marriage, when clearly only two, and even then mostly the *Brahma* form alone, was the type being enjoined by the *śāstrikas* as the ideal. Therefore, although the research evidence has always existed to make these crucial connections, was it mostly Indian shame that kept dowry under a veil of silence?

4.4 Women as property

It is customary that an exchange of gifts should take place at a wedding in order that the two families recognize their new status as affines to each other; this occurs in most communities across the globe. In India this exchange of gifts and particularly the flow of gifts from the bride-givers to the bride-takers is seen to be of prime importance to the standing of the woman in the wider community into which she enters as a wife, and as potential bearer of children who in turn will carry on the male family name. The quantity and extent of these gifts would depend on the financial standing of the families and individuals concerned. When these gifts change hands it is difficult to ascertain who becomes the absolute owner, especially in a Hindu marriage transaction. The blur that has existed between what has long been understood to be solely a woman's property or *sṛīdhana*, and what belongs to the husband's family, continues to be disputed at ground level. Importantly individual rights as opposed to the rights of the family, even where provided and supported by law, continue to be in conflict with common belief systems across Indian communities and in various strata of society. Human rights may provide for the recognition of bride and groom as individual parties to a marriage in the modern context. However, in terms of 'living law' for all practical purposes the essential unit of man and wife is considered to belong to the wider kin-group of the groom's lineage, and thereby the girl is conceived as a part of that unit, and not as an individual for herself. Further, the marrying couple are conceived of, for all practical purposes, as one unit. Then, as they in turn belong to the groom's family, it might be argued that any gifts given at marriage should belong to the husband's family and not just to the bride or even just to that individual couple.

The historic period during which the *Śrī* literature was written was less speculative in nature than the preceding one, during which the *śrī* verses came into existence. It is in the very nature of the *śrī* literature that claims to suggest or even make rules are evidenced in the *dharmaśāstras* and the *Dharmaśāstras*. The survey of

these texts betrays an attempt to impose an idealised and rigid structure onto an otherwise fluid tradition, at least in text if not in practice. This layer of literature provides important clues to developing attitudes towards dowry practices as it enumerates possible rules about how to conduct oneself and the performance of certain obligations. Especially in terms of how best to spend one's wealth there is mention about the status of the wealth one receives as part of dowry. According to Pollock's translation of the duties of the householder outlined in the *Visnu Smṛiti*, we find the following verses directly related to dowry:

What has been inherited, friendly and the dowry of a wife, that

Is called white property, for members of any caste indiscriminately// (VS LVIII. 9)

The entire section from which this quotation arises, deals with three types of wealth that it is possible for a man to own. These types of wealth are classified as follows: black, mottled or white. In the explanation that accompanies these 'strictures', white property is considered the most auspicious and therefore the most appropriate for ritual and ceremonial purposes. Here we have rather clear evidence about the positive conceptualisation of dowry wealth and its status. The fact that it is considered to constitute "white" property clearly means that it is an acceptable form of wealth; it falls under *sadācāra*. We also learn from the text itself that this form of property was passed from the bride's family to the groom's. Further, this property was believed to belong to the person who owned the wife, as there is clear evidence in these texts that the wife, children and servants of a man were believed to be his property.

Three persons are said to have no property: a wife, a slave, and a son.

Whatever they get belongs to the one to whom they belong (NS 6.39).²⁵⁴

Lariviere (1989: 114) points out that this stricture could presumably have neglected to include *sṛīdhana*, which he describes as "the property of the wife given to her at the time of her wedding by her family and throughout her marriage by her husband out of affection". In the wider joint family context, this "protected property" usually excluded immovables (Kane, 1961: 770-802), and this constitutes the core of the arduous debates surrounding the inheritance rights of a Hindu woman. The widespread belief has been that tackling this aspect of the problem will help alleviate the horror of dowry murder from within contemporary society (Kishwar, 1989: 587-88).

²⁵⁴ Compare this verse with MS VIII.416 and Sabara on *Mīmamsasūtra* VI.1.12-13.

However the husband could not dispose of this property in any manner. In the Narada Sm ti's section on the resumption of gifts we find evidence of this. Gifting away one's wife, even in the face of terrible calamity, was considered invalid. It qualifies therefore as an illegitimate gift. Her dowry, however, as a nuptial present, constitutes what may be given away as a legitimate gift. At this stage the shift of emphasis from procreation to control of procreative potential, finally implying a monopoly over a woman's sexuality/chastity is evident. There emerges a relational equation between procreation and property, underlined by control of a woman's sexuality. One could, however, also read this type of verse as indicating the position that a wife, as a human being, is infinitely more precious and important than any form of material wealth. Whatever the precise status ranking between the married woman and the property that she brought with her into the marriage, this kind of text also indicates and confirms that dowry property was well known in those times as a form of valuable asset.

In order to further understand the above discussion in its wider context it is relevant to examine the nature of the various forms of Hindu marriage as recognised by the *sastris*. This will lay more evident emphasis on the idealising role of these texts. As we have seen, the interaction between law and society involves both the ideal and the actual, to the extent that the particular legal system of a society may be regarded as a reflection of its innate value system. Further, both customary and codified law represent also as a "means of controlling societal function...an attempt to...perfect the legal framework, which then becomes a reflection of the aspiration of the society" (Thapar, 1996: 23). Societies differ considerably with respect to the rules governing how the roles of husband and wife are assumed, with specific reference to rights and obligations, which fall to those assuming these roles. This extends further to the behavioural and jural attributes created by marriage: rights and duties enforceable, first by sanction, then by law, giving rise to the notion of marriage as a contract.

In the Hindu context this poses a definite problem, firstly because the element of free choice and consent is ambiguous (Derrett, 1957: 84). Secondly, in most types of marriage (*vi āha*) the union leads to an alliance of families, not of individuals alone. An alliance would appear to imply the continued practice of gift giving and the creation of specific role functions for both families, probably far more incumbent on the family of the girl. For a Hindu marriage to be considered a contractual union the basic requirement is a textual specification of rights and duties for both partners. Derrett (1957: 100) argues

that the responsibility of the husband to maintain his wife is well defined in the *śās ras*, that however seems to be the extent of his duties; while there are copious duties listed for the wife (Kane, 1961: 561-71; Leslie, 1989). Kane's 'duties and obligations' for the married couple are consolidated from an ambiguous list of ideals, with a marked emphasis on the 'obligations' of the wife,²⁵⁵ who was considered to belong to the groom's family for all practical purposes, as in most patriarchal forms of marital residence, and clearly her procreative function was most prized. This attitude is reflected in later writing as well as current legal judgements. Vedic society is emphatically patriarchal, and numerous references regard women as 'chattel' and 'evil', enumerating reasons to control them.²⁵⁶ It appears that a marriage ceremony performs the essential function of moving two individuals from the state of being unmarried to becoming husband and wife. Hindu marriage ceremonials reflect a secular and religious element, representing a *rite de passage*. "Rites of passage are defined as the rites that accompany a change of state... or social position" (Olivelle, 1987: 387) a rite of passage is also a medium for moving an individual or group from one way of being to another through a series of culturally recognised stages.

Marriage as a rite receives "the good auspices of magic" (Malinowski, 1963: 3), as is evident in the Hindu marriage verses in Atharvaveda 14. The texts also declare that a man becomes complete only after securing a wife and begetting a son, and other *samskaras* either lead up to marriage or flow directly from it (Olivelle, 1987: 387). Therefore according to Hindu philosophy *vi āha* is not merely a sacred union but a '*sareera-sa s kara*', a sacrament sanctifying the body. The *Dhar as ū ras* seem to view marriage as a religious rite rather than a *samskara* in the sense of sacrament (Menski, 1984: 668). "Though the character of the Visnu Sm ti shows a high ideal standard, marriage is never referred to as a *samskara*, it mentions possibly for the first time that *vi āha* is to be considered the initiatory rite for women" (Menski, 1984: 708). Interestingly, the Sanskrit term *punarbhū* (Kane, 1961: 619), meaning literally 'to become again' is used for women who were re-married, especially widows. The performance of the marriage ceremony for these women was not the full-blown

²⁵⁵ See Menski (1984: 849) on role descriptions delineated in the *Vi āhapaddhati*, a modern treatise on marriage.

²⁵⁶ In recent years academic writing has attempted to reform patriarchal ideals, making justifications for these references, but none of this challenges the essentially patriarchal nature of this society. See Ray (1999) for detailed discussion of this construct of patriarchy.

Brahmanic version, but a compromise, and we do not know whether a remarriage would also involve dowry payments. In addition, we must not lose sight of the fact that more than one marriage, in certain communities was considered perfectly acceptable, even legal, until the HMA 1955 formally outlawed polygamy among Hindus.

Hindu marriage represents also not a mere religious ritual, but “a public event of great importance” (Menski, 1991: 43). Turner (1987: 220) believes that whatever else the marriage ceremony entails, it constitutes a public as well as a private occasion. A possible reason for the elaborate nature of Hindu marriage was and remains to ‘register’ the marriage in the eyes of the community, which is all that counts in the Hindu context (Menski, 1991: 43). Here the notion of *sadācāra* is evident again in the need to do what is right and acceptable in the community. If therefore the aim of an ideal Hindu society is to uphold a cosmic and moral order by ritual action, then the idea of marriage as a ritual dramatisation of that original ideal is not far-fetched. From this discussion it appears that the primary purpose of the ideal *samskara* type of marriage union was to ritually uphold Vedic society through the principal acts of procreation and ritual.

Marriage or *vi āha* may thus be considered a means to fulfil individual and collective *dharma*, in keeping with *rta*. The following observations are drawn from this:

(i) the term *vi āha*, implies movement/ transition either physical or psychological. This is concurrent with Gadadhara’s argument that the ceremony itself effects a change in the minds of the marrying couple and their families (Menski, 1984: 180);

(ii) the idea of contract, or a union based on specific conditions was not unknown to the ancient and classical view;

(iii) in the textual material *vi āha* is not definitively referred to as a *samskara*. Since there is no uniform conceptualisation of the bond between husband and wife as either sacred or contractual, it may be viewed as a transition from one stage to the next, and therefore a rite of passage, representing elements of both sacrament and contract. This is clear in the reference to marriages as *vi āha*. A necessity to ground this union in the realm of the sacred is emphatically an expression of the importance of ritual sacrifice and further an obsessive perpetuation of pure lineage to this society. It does not appear that financial considerations are uppermost in people’s minds at that time.

These texts do not offer evidence of the agency of the bride; her looks and temperament are not sufficient to convince the husband’s family that she is not a

threat.²⁵⁷ The role of the girl in Hindu marriage both past and present is minimal, in terms of agency even in *svayamvara*, or self-choice ceremonies.²⁵⁸ Moreover, in spite of the name, this mode of marrying, which is often held up as evidence of women's agency, even free choice in ancient India, there is little independent control involved on the part of the bride. Everything takes place under the aegis of the father, who invites prospective suitors and then controls that pool of suitors. Most references to *svayamvara* (Schmidt, 1987),²⁵⁹ in reality describe the *viryasulka* type of marriage where the choice of groom is based on a competitive test of some sort, usually valour, or strength, which are set by the father. The daughter is at the end of this display paraded out, bedecked and beautiful to dutifully "choose" the winner, who is therefore the successful suitor (Jamison, 1996: 238-9). Several verses attest this. In particular the following verse demonstrates this most popular form of marriage choice in the epic Mahābhārata, in the case of Kunti:

This maiden, (though) glorious, abounding in beauty and youth,
and exceedingly endowed with womanly virtues, no earthlords wooed.
so, King Kuntibhoja, her father having invited the kings,
gave his daughter at a *svayamvara*, o best of kings. (MBh I. 1129)

Also it seems restricted to *kāryas*, mainly king's daughters, for instance Damayanti, Draupadi, Sita, Kunti among others. Jamison (1996: 238) suggests that it is likely that the *svayamvara* was not merely a means to gather a host of suitors, but seems to be resorted to when the girl's prospects seem diminished. In this case certainly the reason for Kunti's father to arrange an expensive 'self-choice' ceremony appears to have been Kunti's lack of prospects.

To confirm that the girl is a mere vehicle, consider the quotation we have just examined, in 4.1 (above) As Sharma (1984: 70) puts it:

Contrary to the dominant ideology and the terminology of traditional Hindu law, dowry property is not women's wealth, but wealth that goes along *with* women. Women are the vehicles by which it is transmitted rather than its owners [emphasis in the original].
This statement carefully undoes Derrett's assertion that dowry property constituted *sṛīdhana* (1984: 185). It is possible to clarify the conceptual beginning of dowry with recourse to textual evidence as the point of speculation. Numerous discussions exist

²⁵⁷ Every stranger is considered a threat and is therefore dangerous. See AV14.2, verses 28-29 "take on you her evil luck". Griffith (1917: 176) finds these verses out of sync with the general benedictory tone of the main marriage verses, suggesting that they may have been recited during the bridal procession.

²⁵⁸ For a detailed critical analysis of the changing patterns in Hindu marriage past and present, see Menski (1984).

²⁵⁹ See in particular chapter III (Schmidt, 1987).

regarding the relevance of dowry payments both at the time of marriage and afterwards as ‘pre-mortem’ inheritance (Krishnamoorthy, 1981: 36). These are not irrelevant to any discussion about the conceptual framework for this practice, but it is essentially rooted in a wider argument regarding the status of women, both in ancient and contemporary times. There is no space to include an extended discussion of this argument on the status of women here. Women are provisioned to own six types of property, according to the MDS, as follows:

MDS IX.194

What is given at the (bridal) fire, on the (bridal) journey, in token of affection, what is acquired from brother, mother, and father—these are traditionally considered the six types of women’s property.

Verses like the above give rise to the confusion, and often contradictory nature of the ideas expressed in the textual material. While it is clearly stated that women do have wealth, it is conceptualised as *stridhan*.²⁶⁰ In an almost continual link with the past the police and activists working in the area of retrieval of marriage goods after a union has gone wrong and it is registered as a case of dowry, today, insist that the woman making the claims classify her property in terms of *stridhan*, even if she does not think of this being so. For practical purposes therefore women will cast and present dowry as *stridhan*. This does not help the issue of definition, as we discussed (above in 4.1), nor does it aid an academic understanding of dowry and *stridhan* as separate. Further, in terms of antiquity the *Naradas* and other literature clearly identifies the power and control of the husband over what the wife owned, or her property as wealth or goods he could legally dispose off. So the contradictions abound.

Another specific view that requires critiquing is the belief that dowry protects women and acts as a virtual “safety-net”. According to Oldenburg (2002: 4), “[i]n pre colonial India, dowry was not a ‘problem’ but a support for women: a mark of their social status and a safety net”. Her view is that imperial policies created a more “masculine” economy and deepened preference for sons that fostered the covert or hidden murder of girls. According to her argument, the very establishment of property rights for peasants, inflexible tax demands and various other imperial measures prepared the ground for worsening gender inequality that effectively increased the vulnerability of women to

²⁶⁰ In some Keralite communities this term refers to dowry transactions in reality, which is quite different from the original ontological origin of the term in its Sanskritic sense, as the wealth solely of the woman.

violence in both their natal and marital homes. This thesis attempts to critique the view that imperial policies strengthened the son preference rampant in Indian society, instead adequate evidence will be provided to sustain the argument that son preference originates quite clearly within the textual tradition of ancient India itself. That the ongoing process of modernisation, fuelled by the Orientalist impact,²⁶¹ gave further impetus to the firmly rooted gender inequality cannot be disputed. Similarly, there have essentially been two arguments for and against dowry: One that it assists women and thereby provides them a safety-net, and the second that it exploits and commodifies them (Menski, 1998: 7). Both these views represent the current perceptions of dowry within the academic community.

In modern terms, the theories of Indian feminism in the wider context of global feminism, examining the role of the patriarchal family structure creating and maintaining the norm of violence to exert authority and control shows a unique positioning of an acceptance of certain kinds of violence as part and parcel of the subjugated status of women.²⁶² Dowry, and in certain cases dowry death, by implication, are examined as by-products of this patriarchal environment. The argument here relies on the negotiation between the state, the family and religion in shaping the form contemporary dowry and related violence and murder has taken, with specific reference to the Indian patriarchal context contained in antiquity.

Mothers-in-law are often demonised as perpetrators of cruelty; this fact has been unceremoniously highlighted by those opposing the women's movement. After all if the worst crimes against women are committed by women how does it make men culpable? In the 1980s the major criticism faced by the Indian Women's Movement (IWM) was that "dowry violence was in fact violence by women against women" and that the IWM "should first put its own house in order" (Palriwalla, 1998: 510). Unfortunately these allegations though addressed through the rigorous anti-dowry campaign have not had a wide-spread impact. The power-relations within a family and imprinting of female participants to propagate and control patriarchal norms in order to wield patriarchal power by females continue to be an ongoing political process. The actual process of negotiation between mother-in-law and daughter-in-law remains un-researched. It is the

²⁶¹ See for an in-depth discussion Chapter 5, section 5.1 in particular.

²⁶² See for instance the arguments in the Indian press and further in the parliamentary debates surrounding the institution of the Domestic Violence Act 2005, where it was asserted that a 'simple slap' did not constitute violence. Further to aid the application of this Act a set of rules was also passed in 2006. See Shelkar (2010).

link between patriarchal power structures that function in the home that yield clues about why it is ultimately women who act against women, either sisters-in-law or mothers-in-law. Women as mothers of men are finally accorded some authority, when they have this, it is used by the men in the family to exercise control over the newly incorporated wife, to establish the status quo. These acts of cruelty are means of ascertaining and reinforcing authority in the home. After all the immediate threat is felt by the mother-in-law who must share her son and her kitchen, both of which are considered sacred.

It has been argued that women in Indian households rarely enjoy fulfilling relationships with their husbands. They are not considered equals. The birth of a son not only elevates her position as the mother of a man, but she is finally able to have a satisfying relationship with her son, who is a grown male. Sharing this with an outsider is intolerable and gives rise to an added element of jealousy and therefore another area of conflict. Many young women complain of the “all-encompassing” relationships their husbands share with their mothers. It is important to recognise the interrelatedness of these issues when examining the context of alleged dowry harassment and violence (Wyatt, 2008).

Disturbingly, hidden among the many contrary views expressed in the ancient material are clear examples of condoning violence against women in particular instances. As such references to the beating of women are not unknown in the *śāstra* and *s* literature, it belies the hitherto held opinion of women being seen in this tradition primarily as “divine” or even as goddesses. Similar references to violence against women being condoned in the literary epic tradition show a clear pattern of inferior treatment, often explained as a need to control or fetter the un-tameable, impure, essential nature that is the female principle. These have helped conceptualise the notion that men have the right to beat women. A domestic violence pamphlet aimed at sensitising women to their own situation and dispelling myths about the actual nature of domestic violence is interesting to note here:

In the Indian cultural context, however, a husband is often referred to as “Pati Parmeshwar” (God) thereby elevating his status from an ordinary human being to that of “God”. In accordance with this belief therefore, a husband has total control over his wife (her individuality and her body)²⁶³

²⁶³ “Stop Domestic Violence”: Dealing with Domestic Violence. Sakhya, Women’s Guidance Cell. Goregaon: Mumbai, 2004.

This attitude informs largely the behaviour of women in relation to their husband and is often extended to members of his family. Women believe that a certain amount of beating within the context of an argument is acceptable; this reflects that they may feel that they are indeed the property of their husbands. Despite the spread of a number of feminist views within the social context through educative measures, the perpetuating patriarchy reasserts itself strongly through various media. This aspect of control over women's bodies and women as property is discussed further in the following section below.

4.5 Dowry as a contemporary form of *sadācāra*

Recognising the limitation of space and time, it is necessary to confine the extent of this doctoral thesis to an in-depth study of the conceptual framework that underlies dowry. Without a historical reference point it is difficult to combat the *Hindutva* argument that dowry murder is an oppressive construct created by 'the other',²⁶⁴ especially laying blame at the door of the British Administration,²⁶⁵ thereby exonerating Hindu society of any serious responsibility. The attitude that supports the belief that dowry is a creation of 'the other' brings to light a crucial nexus between the state, the patriarchal family structure and institutionalised religion in formulating oppressive social practices. Dowry is one such social practice, a custom deeply linked to marital and affinal relationships exercised by men but thrust on women to conform to and reinforce. It is also important to consider the social, religious and psychological dimensions of dowry to avoid a one-dimensional study, as Geertz (1973) points out, using an effective anthropological cultural description. This skewed viewpoint constitutes one belief at play in the field of *sadācāra* today. The wider belief crystallised over time is that no matter what the west, the state, or the police as agents of the state or lawyers say on that matter, dowry giving is essentially 'good' and can and should equip a couple to have a better marriage, and by association a better more auspicious married life. This ancient Hindu material clearly considers one type, or form of marriage as superior to others, namely the *Brahma* form. Interestingly, it is this form that in popular traditional memory is linked indubitably to

²⁶⁴ It has been forewarned that universalistic and cosmic claims of Hindu concepts may very easily be hijacked or "exploited today in communalistic and Hindutva fashion" (Menski, 1997: 8) to satisfy their own agenda of recasting a new modernity based on a new reading of the past. This remains a problematic plod forward toward a progressive modernity.

²⁶⁵ Dr Mahesh Mehta, President of the Vishwa Hindu Parishad-Overseas (VHP) speaking at the 6th International Conference on Dowry and Bride Burning, 3rd January 2003, New Delhi. Nevertheless, the involvement of the British administration and its process of codifying law cannot be discounted. See Derrett, (1978: 74) for the negotiation between *dharmaśāstra* and the British codification.

dowry. And in the case of current popular belief let us examine a representative statement made by the father of a bride, where he confessed to a journalist, “no one cares what the law says, without a dowry it is impossible to marry a daughter, we must follow what society says”.²⁶⁶ But first, let us examine the concept of dowry as *sadācāra* itself.

In our first discussion of *sadācāra* (section 2.5) it became clear that whatever is ‘acceptable’ and therefore ‘good’ behaviour in a given peer group or collective context constitutes *sadācāra* for that particular group or context. And by extension this concept of *sadācāra* is what a society aspires to achieve in terms of daily existence to maintain and even create a semblance of civil harmony, even civil society. Over an extensive historical period we see the evolution and exchange of ideas which converge on the need for a society to achieve a sense of cohesion within itself. As the ancient pictographic representation pulls our focus toward the harmonising effect of working together as a society, the individual is not the focus ever. Similar to Inden’s interpretation of caste as a vehicle of ancient/medieval polity, and the under-wire that holds up society by providing an initial framework on which to build the notion of the modern nation state, *sadācāra* provides a building block for Indian society, both in ancient and, right through up until, modern times. It becomes the basis on which civil society grows, with or without overt knowledge of the fact. *adāc āra* is almost equatable to fashion, however it stands more as an underlying rule like the use of certain colours, or fabrics that work and create the desired impact and effect to move a certain society towards it as an inherent and aspirational goal, in the Hindu/*Brahmanic* mode of superiority. *adāc āra* therefore becomes the bare piece of rolling rock, which gathers gradual lichen and moss as it travels through, weathering with history. All the bits that get stuck on to the original rock do not entirely change or alter the nature of the rock itself. So every community, every historic period contributes some specificity to the practice of the particular custom, which we call *sadācāra*. But at its base is the nugget of bare rock that aspires to goodness, wholeness, and taking its place as the catalyst which propelled that particular society toward progress.

²⁶⁶ Mr Sharma’s daughter Kajal Sharma died under suspicious circumstances. The case is still pending hearing in the Delhi Court. When questioned by Adam Mynott, BBC’s South Asia correspondent about breaking the law of gifts valued at more than Rs 5000, he reiterated that it is not important what the law says. In marriage there are a different set of rules that apply, he believed and those rules demand the practice of dowry.

In terms of unpicking Sanskritisation, whereby lower castes and classes emulate and appropriate the symbols and practices of the highest caste in an attempt to better their own status, dowry is the ideal symbolic custom to appropriate. Here is the total social phenomenon that Mauss mentions, and it further represents the transfer of money and power to the man. Unfortunately, in modern scenarios it thereby, undermines the position of the woman in the basic family unit. Where in the ancient and even medieval past the procreative potential of a woman was prized to a certain extent in a contemporary context things are far more complex. Further, the analysis here will show that Sanskritisation does not merely imply an aspiration to caste-status, but rather to class-status (Saavala, 2010). This is borne out by the huge economic ramifications of dowry, highlighted here by the discussion of the rich-poor distinction. The groups that have appropriated this custom, including non-Hindus, have also appropriated the practice of dowry murder.²⁶⁷ A detailed examination of this cannot be taken up here.

One of the primary questions this thesis has raised is how dowry has long defied legal prohibition. In this respect it is important to consider the following:

“Hindu philosophy and Hindu law show that *dharma* – doing the right thing at the right time- needs to be promoted by the state, by moral education, by the good example of individuals (in Hindu legal terminology *sadācāra*), the behaviour of model figures in society, who need not be elderly men who claim to know some sacred sources. This model behaviour does not have to be seen in terms of *dharma*; ...but the message ought to be meaningful to the addressees in a particular socio-cultural environment.” (Menski, 1998: 40)

As Menski (1998: 40) goes on to say, this element of an active reflection of one’s human duty, “seems to be lacking in the perpetrators of dowry violence”. In fact I argue that an innate consciousness of the concept of *sadācāra* is very much at play in the practice of dowry and dowry-related violence. As Menski points out, this “model behaviour does not have to be seen in terms of *dharma*” as long as the message of a socio-cultural practice, in this case dowry and its associated practices, is “meaningful to the addressees in a particular socio-cultural environment” you have the successful transmission and practice of what that society considers right, which need not fit in with the received notions of

²⁶⁷ Pakistan has instituted positions for women police officers in most rural areas to look specifically into cases of dowry violence (BBC: Asia Today Report, April 2003). A host of activist websites have sprung up to offer legal and aid services to Pakistani Muslims with specific reference to dowry violence and harassment. Bangladesh has also had to institute a law prohibiting dowry, which has resulted in dowry murder and harassment.

law. I argue that the practice of dowry itself is considered *sadācāra*, a fact borne out by its wide acceptance despite bans and public agitation. Whether or not killing a girl who has threatened the harmony of the home is considered *sadācāra* remains to be researched. Prof. Derrett (1984: 184) makes mention of the fact that dowry may come within the concept of *sadācāra* in relation to expectations surrounding a good marriage, but casts doubt on whether it was considered “essential”. I believe as a legal theorist he may have overlooked the exceedingly binding nature of custom that Malinowski (1926) mentions as “absolutely bound by tradition”.²⁶⁸

Custom carries within itself the need to be perpetuated, and this in turn is actuated by traditions. When we consider honour-killings in Pakistan and elsewhere,²⁶⁹ where men take the law into their own hands and knowingly defy the state because it is considered the ‘right’ thing to do in that socio-cultural context, we get a glimpse of the continuing force of custom, as underlined by Malinowski when he deems it is “absolute” in nature. Seen in this light dowry represents a custom, which needs to be followed since its practice is bound to the traditional performance of marriages. Few women would like to enter their marital homes unaccompanied by trousseaus. Therefore dowry is and has been a custom highlighted as *sadācāra* in the perception of people and therefore continues despite legal and moral bans. This is the chief assertion of my thesis and herein lies its originality.

My argument is that dowry and dowry-related practices both during and after the marriage are governed by these fluid rules operating within the broad jurisdiction of custom. This gives them the force of tradition and links them with unwritten sanctions should there be any abrogation. Often as discussed by Moore (1978: 219) there are positive inducements to conforming; in the particular context of dowry it means gaining a certain position in the eyes of the community. Thereby the need to outdo other members of a social group with larger guest lists and more functions to celebrate a daughter’s wedding grants the father a prestigious position in the eyes of his peers and the groom’s family. Custom here by no means implies uniformity. There is an expectation of a

²⁶⁸ See Moore (1978: 218-19) on a relevant discussion of Malinowski’s preoccupation with positive inducements to conforming to tradition over sanctions and prohibitions.

²⁶⁹ Several cases have now been reported in the Pakistani community in Britain. See the tragic case of Shafiea Ahmed, who was killed in 2003, the case finally saw a complicated resolution through the conviction of both her parents, neither of whom wholly accept responsibility. (BBC news online 3rd August 2012).

suitable marriage based on a certain standard, set by associated status roles and expectations.

Therefore we cannot start at the point of the inefficacy of the law, rather we need to question and examine the efficacy of custom or *sadācāra*. Srinivas (1984: 8) points out that the social scientist will be fascinated by the resilience of dowry, and this realisation underpins the current extended discussion. We are dealing here with the textual understanding of *sadācāra*, or the ‘right’ behaviour of ‘good’ people discussed in the *s* literature. On the other hand, although the term *sadācāra* itself is not used currently, allusions to this concept of what is considered ‘right’ behaviour in a given situation is implicit in patterns of behaviour linked to dowry practices. Social expectations centred on the concept of ‘*izzat*’ or auspiciousness, which may also be severally translated as per context, as honour or reputation. This auspiciousness outlines the importance of the practice of dowry further as prestations and on-going gifting to secure the auspiciousness linked to the initial gift. The groups that underline this importance may be the peer group or even the larger community to which one belongs. Marriage as discussed above is increasingly seen as an institution required acknowledging and thus ‘registering’ the credibility of a couple in any given society. This then would tie in with the need to uphold the social expectations of an adequate dowry, for a father to maintain and often gain a certain higher standing in his social group. Dowry, this confirms, too, is clearly representative of *sadācāra*, and since this concept is interlinked with custom we must examine how custom itself functions in the Indian context. In fact, if dowry is *sadācāra* then it is important that it continue, as it is perceived to somehow maintain harmony in society. Dowry is not important for itself alone but for the harmony it is seen to uphold in its very practice.²⁷⁰

This section outlined the two broad research agendas within which the following chapters will continue their analysis. Therefore, to answer the first research question directly is not simply how dowry functions; but how custom functions and how dowry functions within the wider framework of custom. In examining this, it will be possible to isolate the role that official law is expected to play (as discussed in chapter 6 below), but

²⁷⁰ Interesting to note here is Haraway’s (1988: 55) belief that “practice is persuasion”; in that the continued practice of any given act carries the coercive force of persuasion to continue that practice. The emphasis in the present thesis is quite squarely on practice.

also a role that customary law performs instead. In fact it will become clear that law intends to influence custom, but custom tends to follow its own erratic ruling.²⁷¹

Therefore to summarise as we saw in chapter two along with the discussion centred on the invention of tradition (Hobsbawm, 1983: 1) one section was devoted to examining the nature and character of the texts in question: What do they represent, social reality or ideals, or an admixture? Do they encapsulate custom? I argue that from the earliest verses what has been preserved is a complex combination of custom and idealisation in order to influence 'right' behaviour and to thereby become a norm, although it is imperative to consider that these norms continue to remain fluid and flexible. Derrett (1970: 5-6) surmises the role of this literature most adequately for the present purpose:

The whole point of having a sacred scripture lies in the fact that the people's aspirations and intuitions, refined after centuries of hard experience..., are committed to words, crystallised in the form of propositions, many of which are none the less real for being phrased poetically and in an exaggerated tone. Many of the classic hypotheses of Indology will not stand up to rational examination: but they are believed because such beliefs express the real attitudes, inherited leanings, and group-aspirations to which most individuals in their hearts (if not always in their minds) are committed from the cradle to the pyre. The ideas to be found in the *śāś ra* are abandoned on the surface, but the attitude of mind and the conception of life remains the same. All the great features of the Hindu mind, its aptitudes, and (some will say) its shortcomings are voiced in the literature, where customs, usages, ethics, philosophy, superstition, religion, and fantasy meet and combine, to produce acclimate of self-expression which the texts individually and collectively serve. The texts have no more authority than the people give them, but they make a perennial claim on the Hindu mind such as few foreign productions, however prestige-worthy, can ever do, because they express what the people from time to time believe in.

Interestingly there is no single term for dowry prestations consistently quoted through the many phases of literature (Derrett, 1984: 183). I have examined here at length the expectations and patterns of behaviour involved in the negotiations for marriage, which precede the actual ceremony. In this way it has been possible to delineate how and why the dominant dowry model has come to occupy centre stage and is held as exemplary.

²⁷¹ See discussion on legal pluralism in chapter 3, section 3.1, also see Hooker (1975).

As discussed above, Hindu marriage falls squarely (rather triangularly; see fig. 3) within the scope of religion, custom and practice. The practices involved in negotiating a marriage have helped to understand how dowry as a custom functions in various contexts. Eminent anthropologist Bronislaw Malinowski was indignant about early theories of primitive law like Hartland's (1924), which emphasised the nature of man's obligation to follow custom. It asserted how primitive man automatically obeyed the customs of his tribe because he was absolutely bound by tradition. Interestingly, what is of great significance here is that Malinowski was little concerned with the sanctions and prohibitions contained in customs. Rather he was struck by the "positive inducements to conformity to be found in reciprocal obligations, complementary rights; and good reputation" (Moore, 1978: 218-19). Malinowski believed that the dynamic force behind the performance of obligations was the social and economic stake of the man who wished to remain in good standing among his fellows. Malinowski's early analysis of crime and customary notions of punishment proved influential to the academic study of law.

This view ties in with my assertion that dowry as *sadācāra* demands a similar obedience from fathers of daughters, and mothers also, who wish to remain in "good standing" and therefore continue to succumb to dowry demands rather than wise up to the real danger that might face their daughters by meddling in the entire gamut of the dowry give-and-take game. This chapter prepares the ground for a deeper insight into how modern day versions of law and society operate in tackling dowry as a custom, and the fall-out from this custom in terms of harassment, dowry demands, and even dowry murder, by setting the context for contemporary customary behaviour. The wider argument in the preceding chapters examined the role of text in law making and legal applicability at ground level in order to tease out the conceptual underpinning of this process. The focus here has to some extent been on the tussle between dowry and bride-price where dowry displaces bride-price. The hypothesis surmised that this displacement occurs by using Sanskritisation, through an emulation by the lower grades of society of the practices of the highest caste in an attempt to better their own status. John Christian's letter from 1907,²⁷² with reference to the Kulin polygamy debate is worth quoting: "It is hard to kill a social custom when bound up and interwoven with the material interest of still a very influential class". This goes to the core of how Sanskritisation works.

²⁷² *The Times*, Wednesday 2 October 1907, p.2.

Dowry has therefore been the ideal symbolic custom to appropriate. The clear transfer of money using and creating a complex power equation between one man and another man, it thereby undermines the position of the woman. Important also to note here, and reiterate is the notion that one must constantly be aware that there are no “golden beginnings” (Rabinow, 1984). That dowry as practice may not be ‘bad’, it is the extortionate demands that make it go bad. It is complex. What we need is a clearer study of various types of dowry marriage in the modern contemporary context, the ones that go bad, and then compare them to the ones that survive. Further, it would be essential to have a representative cross-section from several Indian communities in order to better understand the current state of the debate.

It is important to recall the circle of solidarity, the envisioning of a worldview which sees all elements are parts of a whole. In this regard consider the photo plate (pp.10) where the cosmic dance or the microcosmic dance at the harvest festival calls into action the natural forces of harmony. This represents the way the ancients may have envisioned their world, during important festivals, and rituals especially like marriages and births. Though we have no iconography from this period, we have evidence that the Warli painters of Maharashtra have roots in a similar animistic society (Dalmia, 1988: 121). However, for the moment we must now turn to the ancient verses, which hold the verbal ideology of the distant Vedic world.

Chapter 5: Dowry and marriage arrangements: Examining the ancient texts

“The conceptual universe of ancient India is difficult to access.” (Jamison, 1996: 3)

This chapter examines the conceptual model underlying the practice of dowry in the light of the ideals laid out in the many layers of a contradictory textual tradition. This approach, difficult as it may be given the nature of those texts, further identifies the development of dowry as an *ideal* custom. This leads on to the examination of the struggle between custom, text and practice. In this chapter I finally start my search for what may be considered the conceptual core of dowry in textual tones. We therefore examine the verses themselves in the sections that follow, mainly in translation, however the original Sanskrit for *da* X.85 and *Atharvaveda* Book 14, which form the main evidentiary body of verses, with an adjunct transliterated text, is appended to the thesis for practical purposes.

It is necessary to complete the literature review and to open this crucial chapter with cautionary statements made by fellow academics who seek to delineate a more progressive path for future research and for approaches to be adhered to by scholars yet to come. As philologist and cultural anthropologist Stephanie Jamison notes (1996: 3-11), the historic periods of later, primarily post-Vedic India have been trawled and “obsessively mapped” by anthropologists, historians, sociologists, ethnomusicologists, folklorists, feminist researchers and scholars of religion in definitive cross-cultural studies. Later India is therefore a period of history within easy access on a library shelf to any researcher starting out on their own journey of discovery. However, for those seeking to gaze at ancient India the horizon is that little bit further. Particularly the Vedic period and early epic India remain elusive to the wider scholarly community. As Jamison cautions - and her words are now just over a decade old - this fact rings true still: Ancient Indian texts tend to be the exclusive domain of Sanskrit philologists and students of obscure literary trends. There is an urgent need to further plough the depths of ancient Indian history for clues that can link in with India’s allegedly shining present and unknown future.

As neither a Sanskritist nor a philologist certain areas of research remain outside the gamut of my own expertise. However, it is crucial to note at the outset that the accusation against those scholars outside this relatively small group who are not entirely

familiar with the intricacies of Sanskrit philological method, and who are virtually “walled off” from these processes, is one I will bear in mind. My intent is not, sadly like too many works that have gone before, to project a “picture of ancient India... [as] a projection of fantasy, a golden age,²⁷³ or a leaden one, created from shards of later India reflected in a distorting mirror” (Jamison, 1996: 3).

I am all too aware of the “insider” issues which might alienate my work from the wider scholarly community, however in a virtual academic capsule of intense isolation, I have attempted to remain objective and un-biased in the conclusions I have drawn in the course of writing and researching this work. This chapter examines in some detail the nature of Hindu marriage in its various forms and then shows how certain marriage transactions emerge as norms in other layers of text to inform the wider analysis of dowry as the superior or valid marriage exchange. The Sanskrit texts classify a marriage into eight types. What distinguishes these types from each other is the manner in which the bride comes into the possession of the groom. Although there is no room for an extensive debate about this typology it is relevant to briefly highlight and examine the varying exchange relations that characterise these. For instance the anxieties of gift exchange which arise from the unacceptable marriage by abduction illuminate the discussion below further. No matter the differing forms of marriage as presented in the cultural and ritual texts, they have at the core of them the notion of exchange (Levi-Strauss, 1969; 1971; Rubin, 1975; Jamison, 1991; 1996).²⁷⁴ This is crucial to consider in terms of an evidentiary chapter examining dowry and marriage payments in the ancient and medieval textual tradition.

5.1 Dowry within the context of Hindu marriage

Within the literature several forms or versions of marriage have been considered valid. An alliance made through marriage is crucial, as the pre-occupations in this society belie; this is primarily because of the linkages and associated continuation of kinship that flow

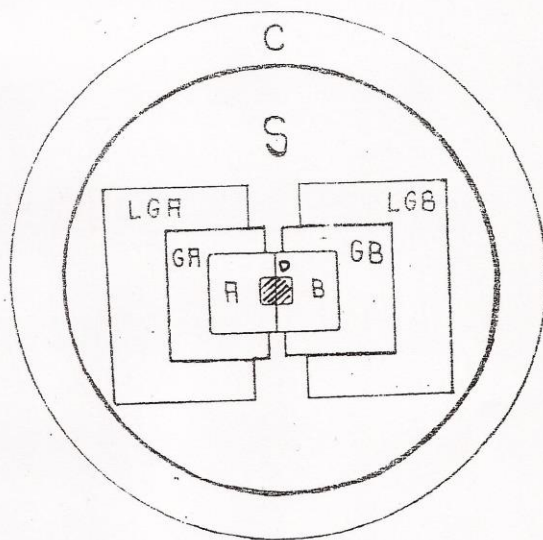
²⁷³ As a matter of note, I re-examine the evidence from sources which can easily be seen to attempt a sort of creative manipulation of the historical data by fashioning a golden age, namely Altekar (1938, 1995) and Kane (1961).

²⁷⁴ This “exchangist” view of marriage alliances as categorised by Claude Levi-Strauss has been critiqued by Goody (1990) in terms of disputing whether the standard in all human marriage is the bride having to be “given” away to the groom. This act of giving as gift and an analysis is taken up further in section 5.3 below.

from marriages. For the purpose of this thesis I suggest, as Jamison (1996: 207) categorises, to view marriages in terms of a wider social agenda in Vedic society: a

Fig.6 Dowry as the centre of the *dharmic* universe

FIG 6: DOWRY AS THE CENTRE OF THE DHARMIC UNIVERSE
[BASED ON MENSKI'S ORIGINAL 1984]



Key:

- A - the husband or groom
- B - the wife or bride
- GA - the husband's group or family
- GB - the wife's group or family
- LGA - the husband's larger group or clan
- LGB - the wife's larger group or clan
- S - society at large
- C - the cosmic world or universe
- D - **DOWRY**

synchronic and *diachronic* model, see Fig. 6. As a *synchronic* alliance a marriage performs the function of cementing linkages between non-contiguous parts of the Aryan community, thereby providing social cohesion through *sadācāra*. Further, an ideal or appropriate marriage alliance is *diachronic* in that it provides a perpetuation for proper lineage and therefore a foundation for family through *dharma*. In these terms marriage fulfils two fundamental functions as seen *ritically* and *dharmically*. How were marriages made? What was considered valid or legal in terms of making marriages and why? These questions will be tackled in the following discussion, always looking out for any signs of economic and exchange-related aspects.

Sifting ideals from actuality is difficult. This becomes more apparent when the period under survey is considerably removed from the present. However, through an examination of the roles women inhabit and play in the controllable, hypothetical world of ritual it becomes possible to establish some of the underlying conceptual perspectives in the “messier realm of reality” (amison, 1996: 207). Any evidence from social documentation is absent, as we have discussed previously. Reality as depicted by these texts is, acknowledgedly, removed to some degree. The texts that present themselves for analysis are vast, often contradictory. However, in search of a single custom, essentially reference to one term, within the single context of marriage the journey is a straightforward one, signposted by expectations. Ideas about ancient India may be found in unexpected places (Patton, 1996: xvi).²⁷⁵ In this case, although there are references to expectations outside the context and scope of the texts dealing with domestic ritual, primarily the customary practice of dowry is encapsulated neatly within the expectations of marital alliance making behaviour. Further, in terms of text versus reality, we are constantly aware that these expressions of thoughts, ideas, positions on life and living are in constant negotiation, and constant conflict with one and another. They present ideals, mostly but what are ideals if not the crystalline creations of customary threads in society?

In terms of assessing the Vedic worldview for women the most obvious social institution affecting women as a group in ancient India is marriage. Within the realm of

²⁷⁵ Patton (1996) draws attention to the fact that Vedic voices are often out of sync with each other. As a philologist and anthropologist working on Vedic conceptualities she finds that myths combine often in conflict. That often myths, grammatical rules, even discussions on the epistemology of the names of deities form an uncomfortable, un-harmonic admixture in the Vedic verses of the earliest and even later periods, encompassing some three thousand years of composition, and this is not surprising (see Table 2). Her work on the *hadd a ā* examines the position of myth-making, and ritual as clues to Vedic Indian society’s use of language and myth as an argument not merely for transcendence but that this provides clues to the current incorporation of myth into the very structure of language past and present.

marriage we find further clues to the conceptual position of women, and their property rights, including their incumbent responsibility to create linkages where none have existed. The cementing and creation of kinship ties is one of the ways in which anxieties about the nature of inter-linkage between “mutually obligated strangers” (Jamison, 1996: 207). Specifically in terms of exchange, whether in or outside the context of marriage, the nature of transactions is fraught with tensions. Further, the exchange at the heart of marriage as an institution, exemplary to this society, necessitates tensions of its own. And as Jamison comments, these specific tensions “need their own institutionalised means of resolution” (1996: 207). This role is crucial. Menski (1984: 503) found the detail and attention paid to the welcoming rituals and necessity to mark and incorporate the new bride into her new role as joint-householder and partner particularly noteworthy in his thesis on role plays in ancient Indian marriage expectations.

Before further analysis of the evidence (section 5.2 below), it is important to assess Inden’s (1976: 5; 51) argument that in the medieval period in Bengal marriage exchanges were the defining actions by which high and low ranks were maintained, or even altered. Inden admits that at first he was guided in his research by a hypothetical model based on the “aristocratic” or “class” model based on European cultural concepts. He found he had to adjust this considerably faced by what he found in the field, in terms of the vital importance marriage had in terms of gaining and securing rank. In medieval times dowry marriages were the order of the period, attested and declared in the commentaries of the day. In modern times, there can be little doubt about how ‘heinous a crime’ it is considered. But in the past giving of a dowry was prestigious, even proper. So attitudes have changed. But it has been claimed by academics and others that dowry is categorically un-Hindu, even constructed, as discussed previously. So what evidence do we have to the contrary? We need to link this with the Vedic view to complete the wider aim of this thesis and to keep the discussion between past and present ongoing, and alive. As seen so far, dowry is one such case in point of a custom which elicits different views at different times. In such cases one must access information which, given the level of antiquity here, is in itself difficult. Clues to expectations and attitudes to customs may be found in the voluminous literature. The various forms of marriage need to be re-examined from a perspective narrowing in on the financial transactions linked to them. The belief is that this research will provide essential clues about how

“such ancient practices and assumptions” relate to marriage expectations and, further, how these transactions were “socially valued and treated” (Menski, 1998: 225).

In terms of Vedic notions of prestige, fame and respect clan rank was seen as crucial. We examine in some detail the sources which lead us to the evidence of how this clan rank underlines the giving of dowry as a crucial determinant in a good future for a marriage. Further, we will see how wealth is inexorably linked to the gifting of the girl at the time of and even before and after the actual ceremony of marriage. Worship was predominantly the focus to a genus code of conduct in terms of Vedic society (Inden, 1976: 147), as seen in chapter 2. This has been linked to the divine power to transform bodily substance, varied from caste to caste and clan to clan. Higher castes and clans were believed to be higher because of their greater power to generate and transform coded substances while performing an act of worship. Therefore in terms of caste, the *Brahman* was more powerful and higher than the *dr̥as*, primarily because he possessed knowledge of the Veda, or the entire corpus of sounds believed to embody the divine power by which all of Vedic/Hindu society itself was called into creation.

Similarly at clan level the Kulina, was more powerful than the non-Kulina, because this sect was considered to have powers to generate new caste rank for sub-castes that had fallen out of favour, through being worshipped themselves. Most importantly, it was believed, and continues to be so, that the high and low Vedic qualities and codes of the ranked worship *ā s* were not transcendent “ritual” or even “spiritual” elements with respect to the material wealth and power of the humans who possessed them. In fact quite the contrary, these elements were imbedded in the bodily substances of the Kulinas and non-Kulinas and fed by the wealth and food offered in worship. Therefore the relationship between them was a transformational one. Selfless gifts of wealth and food caused the worshippers’ embodied rank to be transformed into prestige, fame and respect. Or perhaps even higher, into superior clan-rank or caste, and the acceptance of wealth and food caused the bodily substance of the worshipped to be nourished (Inden, 1976: 148). More of this discussion is relevant to the literature and commentaries and therefore taken up briefly in section 5.4 below.

The following discussion examines which form of marriage came to be considered as the ‘ideal’, enumerating possible reasons for this in the given historical context. Additionally, a brief examination of the ‘ideal’ qualities of the bride and groom leads to a discussion of any possible correlation between these qualities and the amount

of the consequent marriage prestations and other payments. Evidence in the form of expectations for particular progeny from particular types of unions is analysed to understand the rationale behind marriage prestations.

5. 2 The eight forms of marriage

The *sūtra* texts have “recognised eight methods” by which two individuals might be “united to lead the life of a householder” (Pandey, 1969: 158). The list of marriage types is a consistent feature of the *dharma* texts,²⁷⁶ and occasionally found in the *gṛhya* texts. Interestingly it is dealt with in some detail in the epic literature, specifically the MBh not merely in *dharma* related passages (MBh XIII.44.3-9), but also in narrative form (MBh I.96.8-11). In descending order of preference these eight forms of marriage are *Brahma*, *Daiva*, *Arsa*, *Prâgâpatya*, *Āsura*, *Gandharva*, *Raksasa* and *Paisaca*. These are further subdivided into two categories: the first four being *prasasta* (acceptable) marriage unions, while the others are considered *aprasasta* (unacceptable). As Pandey points out, however, these methods have not been mentioned in the pre-*sūtra* literature, neither are all the eight forms mentioned in all of the *grhyasūtras*, with the exception of the *Asvalayanagrhyasūtra* I.6. It is clear from the commentaries that certain marriage forms were preferred for specific groups. The texts outline the first four as acceptable for the *dvija* (twice born), the following four being unacceptable for them but acceptable for those of lower rank.²⁷⁷ The texts differ in their view regarding of the legality and desirability of these marriage types. They almost all condemn the last type, likening it to rape, rather than marriage and applaud the first three, sometimes four, but remain ambivalent even contradictory regarding the ones in between. This provides an interesting social comment on the need to perhaps manoeuvre on the behalf of offspring of such an unnatural or forceful union. Kane (1961: 521-22) presents a useful summary

²⁷⁶ For more details on the *dharma* literature and how it treats these types see for instance MDS III.20-34; ApDS II.11.17-20; GDS IV.6-15; BDS I.20.

²⁷⁷ Later writers, particularly commentators who find fit to pass value judgements on the validity and degrees of sanctity of these “unusual” unions include Gooroodas Bannerjee (Tagore Law Lectures 1889). In his view it was important to take note of and condemn the ‘barbaric’ forms of marriage which undermine the golden past of Indian history. He commented more than disparagingly on these four unacceptable forms of marriage. Understandably during the British Raj period the neo-Hindu reformist elite emerged, feeling the need to conform to the “civilised” ideal presented by the west. This school of thought clung to the need to conform highlighting monogamy as the only viable choice for a civilised society. Seeing the rooting out of all other marriage types by law represents one such imported “ideal”, which also has been impossible to enforce. Case law is rife with second and third wives suing for rights of their children and families. And again this is not restricted to India, but is a marker of modern society elsewhere where polygamous societies continue to grapple with the need to conform to the western model of monogamy.

of the varying views. Jamison's (1996: 296) conspectus is worth considering in the context of gift exchange and how the classification of each type affects this.²⁷⁸

Derrett points out that the *samskara* type of marriage was one conceptualisation of these *prasasta* unions. In his view the texts "constitute two threads which ran right through the law as it was expounded in early medieval times" (Derrett, 1957: 84). The first threads of literature were those that recognised varying circumstances that led to marriage, even if considered *aprasasta* "unapproved", as a means to "satisfy natural urges", such as sale of the bride, a union through mutual attraction and therefore without the consent of the parents, or capturing a bride by foul means. The second, "seek to satisfy the desire of families to establish noble and pure lineages" by elevating the union to the level of sacrament; a union necessary for the performance of essential religious sacrifices requiring the participation of both husband and wife, and for the production of progeny (Derrett, 1957: 85).

The *dharma* texts do not underline the aspects of solemnisation and there is little evidence that the form of marriage has any effect on the actual performance of particular rituals. Two aspects are stated however; first the means of acquiring a bride, and second the quality of the offspring accruing from the nature of the union (Menski, 1984: 185). Both these have definite implications on the transactions taking place within its particular context. It instantly creates notions of ideal and undesirable, placing emphasis on one

²⁷⁸ As cited in Jamison (1996: 296) the tabulated conspectus of legal doctrine is as follows:

MDS III.23	first six legal for <i>Brahmana</i> Last four for <i>arya</i> Same (except Raksasa) for <i>asyas</i> or <i>dras</i>
24	first four: <i>Brahmana</i> Raksasa: <i>arya</i> <i>Asra</i> : <i>asyas</i> and <i>dras</i>
25	Paisaca and <i>Asra</i> never to be used; other three of the last five acceptable [for all?]
26	Gandharva and Raksasa: <i>arya</i>
39-41	first four produce good sons/ last four bad sons
ApDS II.12.3	first three (Brahma, Arsa, Daiva) good (in that order)
GDS IV.14	first four (Brahma, Prajapatya, Arsa, Daiva)
15	or first six (+ Gandharva, <i>Asra</i>)
BDS I.20.10	first four (Brahma, Prajapatya, Arsa, Daiva) in order: <i>Brahmana</i>
12 6 and 7	(<i>Asra</i> , Raksasa): <i>arya</i>
13 5 and 8	(Gandharva, Paisaca): <i>asyas</i> and <i>dras</i>
16	Gandharva: for everyone
ViSmr XXIV.27	first four (Brahma, Daiva, Arsa, Prajapatya): <i>Brahmana</i>
28	also Gandharva: <i>arya</i>
MBh XIII.44.8	Paisaca and <i>Asra</i> : always illegal
44.9	Brahma, Ksatra [Raksasa], Gandharva: legal
Kane, HDS II.1.521	all <i>s</i> agree on first four (Brahma, Daiva, Arsa, Prajapatya) almost all agree Paisaca worst.

form as preferable to another. None of these forms enumerate the expected marital duties of the spouses (Menski, 1984: 640).

A few of these forms of marriage remain prevalent today. Others have fallen into disuse. However, the fact that a fusion of two or more forms has come to represent the ‘ideal’ of the *kanyadan* marriage today highlights the conceptualisation of dowry prestations. It bears repetition that there is no *one* Hindu *vi āha*, but various possibilities, and as many if not more customary practices accompanying each form. Most of these may not be recorded but have been passed down in fluid form through language as preserved in memory. In order to gain a clearer understanding of the transactions that took place during these variant marriage practices we need to enumerate the forms themselves and examine their nature. The list is presented in descending order, which in itself is a clue to the conceptual hierarchy being enjoined:

The ***Brahma*** form of marriage emphasises the apparently “free gift of the daughter” to a suitably chosen, qualified groom by her father or guardian. Chatterjee observes that the role of the bride in this marriage is minimal regarding the choice of mate (1974: 370). He surmises that the father made the choice chiefly based on the groom’s respectability. The giving or gifting away of the girl or the *kanya*, as a gift or *daan* was clearly considered a high honour. In this form of marriage the suitability of the groom is emphasised as one well versed in the Veda, and essentially a responsible mate who will maintain and preserve his wife in a manner she was accustomed to. The *Gautamadhar as ū ra* I.44, clearly states that in this form of marriage the maiden is gifted away “bedecked with clothes and ornaments”. The *Manu Sm ti* III.27 echoes this practice:

“[W]hen a man dresses his daughter and adorns her and he himself gives her as a gift to a man he has summoned, one who knows [*i*] the revealed canon and is of good character” (Doniger, 1990:45-6).

The commentator Medhatithi “prescribes that the act of adoration with clothes and jewelleries [sic]” be directed toward both bride and groom. Interestingly, these “adornments with clothes and ornaments should...be of a *special type befitting the occasion*” [emphasis added] and should reflect affection for the daughter and honour for the groom (Chatterjee, 1974: 370). This commentary, dated at approximately 800 BCE, highlights a definite delineation of the amount and nature of endowments at marriage, clearly dependant on the qualities of the bridegroom. This name was given to this form of

marriage to enjoin and ensure the emulation of the *Brahma* form of marriage as a model for all sections of society, regardless of their rank or clan. Pandey (1949: 169) believes that it was so called as it was thought most fit for the *Brahmanas*, conceptualised as the ideal gift givers and receivers (Chatterjee, 1974: 406-7). Chatterjee notes the possibility that the chosen bridegroom should be a *Brahmana*. For two reasons, in terms of being well-versed in the Veda and as one who was in the position of being honoured with a gift and also in a position to accept such a gift. Here the element of caste is subtly introduced into the picture of an ideal marriage. Chatterjee instead believes, once more propounding the notion of Hindu marriage as an indissoluble sacrament, the inextricable link between *dharma* and attaining the absolute (*Brahma*) leads to this most ideal form being called *Brahma* as this is most suited to “the idealistic framework of Hindu society” in those times. It certainly seems plausible given the belief system of this ancient society.

All these four forms are further referred to as *dharmava* or acceptable specifically in terms of *dharma*; a crucial characteristic in terms of the larger framework within which these marriage forms need to be seen. Being a householder was the mainstay of human society, which was upheld by furthering the aim of procreation through taming the untameable feminine principle in the woman. Through this set of ideal rituals the tamed woman and the taming man set up an ideal household within which to create a mirror for the cosmic order which they saw in the order of the ongoing natural cycle of the elements around them. They as one unit of wider society seek to uphold their right and good duties, which in turn underpins the working of all society. Marriage, in any form is the ideal to uphold all of society in this worldview.

Most pertinent to the present argument is the fact that this form of marriage does in fact bear resemblance to the marriage of *Surya* with *Soma*, as described in the *da* marriage verses. There is a clear delineation of it in *da* X.85 in verses recited by the father of the bride, and the groom who receives her. The element of *kanyadān* is clearly evident and in this case it is possible to trace to the earliest Vedic compilation, to what Pandey calls a “prototype of the *Brahma* form” (1949: 169-70). He notes: “This form is still current and the *most* popular in India, though it has been prostituted with the morbid stipulation of dowry”. It is fascinating to note the clear shift in the conceptual model whereby this formerly honourable practice of gifting away an adequately “bedecked” daughter, has turned into grounds for an objectionable extortion.

The *Daiva* form of marriage signifies a noteworthy development on the *Brahma* form of the bride as the ideal gift. Here we observe the bride being gifted by the father to the “officiating” priest, to accrue spiritual and secular merit (Chatterjee, 1974: 418).²⁷⁹ The active agent in both these forms of marriage appears to be the father for apparently different reasons however. In the *Brahma* form it appears to be out of a concern for his spiritual gain, though nowhere clearly expressed. While in the *Daiva* form the ceremony surrounding the marriage appears to be beneficial in spiritual and social terms to the father and according to Chatterjee (1974: 419) was not a “selfless” act. The daughter was forwarded as sacrificial fees toward the ceremony, once more suitably adorned. The nature of the payment was important being in the form of sacrificial gift to a priest, who performed the *Daiva* ceremony, therefore the name, on behalf of the father (Pandey, 1969: 169). A craving for spiritual and secular benefits might be traced to the *da* [1.54.9; X.49.1], where the hymns bear direct reference to hopes for both spiritual and material benefit. The usage of this form, being directly linked to the evolution of the priestly class, was thus crucially linked to the notion of the value and nature of the gift given. The higher the value of the gift given at the marriage, the better the spiritual gain it brought. Medhatithi commenting on *Manu* III.28 does not agree that the gift of a daughter may constitute a sacrificial fee. These sorts of disagreements within the adjunct texts abound. Even in the primary texts we have numerous conflicting views on the same subject.

The *Vaikhasana Grhyasūtra* stresses the ornamentation of the girl. The *Asvalayana Grhyasūtra* I.6.3 also states that the girl suitably “bedecked” with ornaments should be given in marriage to an active priest. The *sn* XXIV.34 stresses that one who gifts his daughter in this manner not only gains *svargam* or heaven, but also sends fourteen generations to heaven. This testifies to the highly meritorious nature of this union, but the element of sacrificial gift underlines the financial aspect of the transaction as well. Chatterjee cites evidence of the exorbitant nature of these gifts, as presented in archaeological and epigraphic proof (1974: 456).

The *Āśvina* form is distinguished emphatically from the *Āśvina* form as the latter was looked down upon as the sale of one’s children (*Manu Smṛiti* III.51). Here the

²⁷⁹ At what precise or possible stage during the development of Vedic ritual science the priests came to occupy and create this job-function is unclear and therefore cannot be discussed here at length. However, for a full assessment of priestly role function and kingship theory see Heesterman (1957 & 1985).

daughter was given away to a groom who offered “a pair of kine” not as bride-price but purely for sacrificial purposes to the bride’s father. Here we observe a clear conceptual bias against the practice of compensating the father of the bride, or her family in any way. This is looked down on in definite terms. Menski finds this element of “disrespect” attaching itself to this form purely because the transaction flowed unilaterally from the groom’s family to the bride’s and not the other way (1984: 188). This attitude is a vital clue towards the idealisation of the opposite transaction, from the father of the bride to the groom, as in the *Brahma* form of marriage. In Pandey’s view as well this form fell into disuse because of an apparent similarity to the *Ās r a* form, which was clearly seen as not acceptable. Within the description of this form of marriage we already find the seeds of idealising one particular kind of marriage payment, the dowry form and quite definitely not another, bride-price.

In most societies marriage patterns involve the gift or exchange of wealth flowing from wife-givers to wife-takers or vice-versa. There are several reasons cited for the acceptance of the flow of wealth in one particular direction, and a preference for this. This phenomenon usually characterises hypergamy,²⁸⁰ or *anuloma* unions in the ancient Hindu context better. It is not unheard of to better one’s social and financial standing through a suitable alliance at marriage. This is evidenced across the literature and prevalent to this day. Women are clearly conceptualised during this entire phase of literature as the most essential instrument to attain, even acquire status betterment though. Here we clearly have an early conceptual seed for the idea of bartering for better ancestry as we evidence in medieval Bengal, being enjoined in the clan charters, or *kulaji* texts (Inden, 1976).

The *Prâgâpatya* form of marriage recognises the “fixing of conditions”,²⁸¹ here the bride’s father gave his daughter to a suitor on the clear understanding that they should perform their civic and religious duties together. The name of this form of marriage suggests that the purpose of the marriage was that of the couple discharging their duties to the main deity of early Vedic India, *Prâgâpati*. Through the very act of procreation and then the rearing of children, they were fulfilling the *dharmava kula* (appropriate or right clan practice and duty) *karma* and *dharma*. The element of consent

²⁸⁰ As we have seen from the discussion in 4.3 above.

²⁸¹ Devala as cited by Pandey (1949: 165).

seems relevant here as to take on these duties both individuals had to be aware of its implications. The *Prâgâpatya* form also emphasises the role of the householder and his wife as upholders of sacrificial ritual practice, as in the idealised *Brahma* form. However, certain conditions are incumbent on the groom, making this form inferior to the previous three, as the gift is not “free” but conditionally made (Pandey, 1969:167). *Gautama dhar as ū ra* I, 4.5 characterises this union as one where the bride is gifted with a special *mantra* stressing their joint performance of religious duties, while the *Baudhayana dhar as ū ra* I.11 20.3 elaborates the need to bedeck the bride and also dress her in new clothes. This *Baudhayana dhar as ū ra* verse is explained by commentators as expressing the duty of the bride’s family to adorn her suitably (Chatterjee, 1974: 464).

This clear enjoinder to the parents, particularly the father of the bride, to bedeck the daughter suitably enough to become acceptable as a gift is of repeated primary concern here. This reiteration through the *sū ra* and *śās ra* literature is a very telling clue toward the idealisation of dowry, or goods that go with the girl. It clearly was a custom to do so, but maybe people needed to be told to take it seriously. In its earliest sense the notion of moveable property, in terms of brilliant attire, jewellery and adornments all point clearly to the conceptual importance of bedecking the girl. This must be read as an enjoinder to the father of the girl to make her ritually acceptable in the eyes of the groom, and the family who will receive her. This also ties in with ideas of status of the giver and receiver, as seen in sections 4.2 and 4.4 above.

The role of the father in the act of gifting, both the girl and the goods that go with the girl, is emphasised in all of the above accepted forms of marriage. However, it is evident from the verses that though offspring were considered to belong to their father and his family, they were not possessions on the same terms as cattle or other items that could be given away when in debt for instance. The married couple were ideally considered joint owners of property, a fact borne out by the term *dampati* used for the couple. Essentially the pair was looked upon as joint upholders of the world of *rta* through an adherence to *dharma* (*dharmena*). Sternbach (1965: 370) in his analysis of the *Brahma*, *Daiva* and *Prâgâpatya* forms notes:

“[i]n the case of these three forms, contrary to the *Arsa-vi āha*, the obligation to give a dowry was clearly expressed. So we may say that the bestowal of the dowry was the essential point in these... and they were the highest most esteemed forms...”

Sternbach (1965: 370) further explains *Man* III.56, in the light of commentarial writers who declare that women are honoured by giving gifts. This becomes the possible reason why a dowry should be given; as a means of “honouring” women.²⁸² Chatterjee writing in the late 1960s and early 1970s disagrees (1974: 419) clearly on moral grounds, that this ideal marriage could not have been one that upheld the (by then) heinous practice of dowry. He further cites *Kṛṣṇa* from the *Mahābhārata* *Adi-parva* 213.14, “belittling” this form of marriage in order to uphold the alternate *Aṛṣa-vi āha* form (1974: 413). Chatterjee cites *Man* III.55-59 as well to emphasise the importance of gift giving to women within, the context of marriage.

-[55] Fathers, brothers, husbands, and brother-in-law who wish for great good fortune should revere women and adorn them.[56] the deities delight in places where women are revered, but where women are not revered all rites are fruitless. [59] therefore men who wish to prosper should always revere these women with ornaments, clothes and food at celebrations and festivals.” The interim verses enumerate the death and destruction of families and houses that might occur if women are not so “adorned” (Doniger, 1990: 48)

Interesting to note is the commentarial elaboration on the prestige of this particular marriage union. It shows the evolution of a particular thought pattern, resonant even in the tone of contemporary writers upholding the religious obligation of a father to give away his daughter as the “sacrificial gift”, thereby creating merit for himself and his ancestors (Chatterjee, 1974: 418; Menski, 1984: 187-8). These ideals couched in ritual evolve with the nature of canonical assertions that this form of marriage is indeed the ideal form. In contrast, the four unacceptable forms are characterised by financial or other transactions clearly not considered ideal within the larger framework of the *Brahmanic* world-view.

The *Ās ra* form of marriage was one “where the husband having paid money to the relations of the bride and the bride herself, accepts her out of free will...”[sic.] (Pandey, 1949: 164). According to Pandey, as the primary consideration for this marriage was money, it was “more or less, a purchase”, which is a fascinating reiteration of the commentarial literature in its own classification of the *Ās ra*²⁸³ marriage as the one

²⁸² *Mahābhārata* 13.46 and 5-6, as cited by Sternbach (1965: 370), also highlight the same passage.

²⁸³ The term *Ās ra* particularly in early Vedic usage tends to refer to those people outside the Vedic framework, who were possibly the early inhabitants of India, before the advent of the Aryan people. The fact that this correlates also with practices of bride-price marriage in matriarchal societies is noteworthy. The darker skinned *dasyus* and their customs were considered ritually inferior. This explains the name for

which constitutes the sale of one's children, an unacceptable and demeaning act. He argues that with the growing conceptualisation of marriage as a religious union "where the bride was regarded a meritorious gift by the father to the bridegroom", this form of sale was increasingly frowned on or looked down upon (1949: 165). An ardent but "undesirable suitor" according to the *da* attempts to please the father of the bride with large amounts of money:

Asravam hi bhuridavattara vam vijamatur uta va gha RV I. 109.2

The term *vijamata* here has been interpreted as the husband of a woman who is purchased. From a range of explanations in the various *gryhasū ras*, and their subsequent commentaries it is evident that this form of marriage was accompanied by definite transactions of wealth from the wife takers to the wife givers. Here the notion of *kanyadāna* is clearly absent. The girl appears to be a prized asset in her natal home, which worth literally weighed in gold. The *Kathaka Grhyasū ra* outlines a separate set of rites for this marriage, and within these the mention of gold is vividly evident (Chatterjee, 1974: 258).

Pandey's assertion that the custom of dowry did not exist in ancient India contradicts not just the evidence stated here, but he also contradicts himself by stating "the guardians of the girl *had to* offer dowry to the bridegroom" [emphasis added] (1969:166). An exceptional reference is made in *da* X.23.111, where it is deemed acceptable to "dispose of with money [sic] a daughter who had "physical defects". The compensatory element of this payment is noteworthy; as it displays a value system entrenched in physical beauty.²⁸⁴ This also indicates that financial inducements may be used to dispose of a daughter who is not considered ideal as a bride. This, too, is an aspect of the 'dowry problem' that is still relevant today.

Before proceeding to describe the remaining three unacceptable forms of marriage a brief analysis of the five we have just described is required. What characterises these first five marriages is the terms of exchange linked with the ritual rites. Each of these involves the gift of the girl, by the father, or other responsible male guardian. This clearly distinguishes these from the three marriage types we have yet to describe in terms of the practice of gift-giving, whichever way that gift travels. The MDS expresses in mostly

this form of marriage as well. There are verses relating to the behaviour of the *Ās ras*, who appear in constant conflict with the *devas* or the gods. (Macdonald, 1896; Berridale, 1966).

²⁸⁴ Several verses from the *Manu Sm ti* enumerate the kinds of women considered unsuitable by stating their physical features. Women with bodily hair and red hair were considered dangerous, for instance.

synonymous terms the acts of giving: *dāna kanyāyāh (Brahma)*, *s ādā nā (Daiva)*, *kanyā r adāna (Ār a, rā ā a ya, Ās r a)*. The MDŚ V.152²⁸⁵ clearly dictates that this gift is what creates “the bridegroom’s mastery over the bride” (Jamison, 1996: 212). As we will see in the marriage verses from the V X.85 both the parental and the conjugal representatives are willing participants in the exchange of property, changing hands by means of the reciprocity governing the arena of such gifts. This act, and the ritual process recognising this act as an important life-cycle rite, creates a specific kind of link between the two people, however predominantly the men involved in this exchange, not necessarily bride and groom. As Jamison’s (1996) research characterises the giving of a gift implies and acknowledges a relationship of mutual obligation. The act of giving in itself implies a conscious and willing recipient, who by accepting the gift acknowledges a relationship of obligation with the giver. Both these roles hinge on risks (Levi-Strauss, 1969:115; Rubin, 1975: 174-5). However, the making of these alliances may be of benefit to both parties for differing reasons. Since these marriage types are classified as gifts, it also invests them with the incumbent qualities involved in ordinary gift-exchange. In concentrated form of course the ensuing relationship is a vital one, and may be likely to have longterm repercussions where a fertile girl is concerned (Jamison, 1996: 212).

More to our purpose is the enjoinder made in these marriage classifications. The texts do not consistently treat the marital typology in terms of ‘gift’. Notably the *Brahma* form is most consistently associated with the gift reference directly.²⁸⁶ The *Daiva* form is often identified as a gift, while the *Arsa* and *Prâgâpatya* forms at times, while the *Ās r a* is *never* classified as such, outside of the MDS. Importantly the implication of the appearance of the words ‘give’ or ‘gift’ in any particular text is not always significant, says Jamison (1996: 297) because of the “condensed style of the *sū ras*”; the term may be supplied for subsequent entries from the first marriage type in each list, namely the *Brahma* form. However, the consistent lack of gift terminology in association with the *Ās r a* form in all texts apart from the MDS seems almost deliberate, and belies the attitude thereby consistently enjoined by the texts. After all the gift is the ultimate offering with which to placate, induce further gifts from, and secure wealth in this life, for both gods and men.

²⁸⁵ MDŚ V.152 *r adāna s ā yakārna* .

²⁸⁶ YājñSm I.58; GDS IV.6; VāsDS I.30; BDS I.20; ViSm XXIV.19; ĀśvGS I.6.1; MBh I.96.8, XIII.44.3.

The *Ās ra* form is not described as a gift outside of the MDS, condemns bride-price in no uncertain terms. Some texts do utilise the word give, for instance the BDS I.21.3 notes: “Those crazed with greed give their own daughter for a śulka”²⁸⁷ (Jamison, 1996: 297). While the epic literature follows the trend of the older texts in categorically demonising bride-price marriage; MBh I II.95.72 “Let him (not) give a maiden for śulka”.²⁸⁸ The MGS I.7.11 also has a similar enjoinder: “He should give an approved (maiden) by the *Brahma* or Bride-price rule”.²⁸⁹ Here the term śulka is used interchangeably with the notion of dowry rather than bride-price in terms of flow of wealth because it is clearly linked to the *Brahma* marriage rite, as the use of terms like *dharma* or done in accordance with *dharma*. This is crucial and noteworthy for the use of language and ideology in the early thought processes as expressed in these texts. This gives us further clues as to the conceptualisation of marriage payments and *prestations*.

The earliest use of the word ś ka within the context of marriage in the older textual material appears in a story about the dire effects when a marriage rite is not accompanied by an approved cycle of gift-giving, and or exchange. In fact the word is linguistically used quite clearly implying reciprocal exchange between bride and groom, in a mutually contracted marriage. The *Jaimini Brahmana* is positioned in terms of age somewhere between the Vedic *a h ā s* and the Upanishads, approximately between 700-500 BCE (See Table 1 and 2, chapter 2 above). The cautionary tale, clearly underlines the textual intention for following the practise of gift-giving at the time a marriage is contracted:

JB I.145: These two worlds [heaven and earth], being (originally) together, went apart. Nothing came to either one of them (from the other). The gods and men went hungry, for the gods live from what is given from here [earth], men from what is given from yonder [heaven]. The Brhad and Rathantara (Samans) said, “Let us arrange a marriage by means of these two dear bodies of ours.” They arranged a marriage by means of them. Yonder [heaven] made a saline soil (as) a śulka for this (earth) from yonder; this (earth) made (sacrificial?) smoke (as a śulka) for yonder [heaven] from here. Yonder (heaven) made rain (as) a śulka for this (earth) from yonder; this (earth) (made) the place of worship (as a śulka) for yonder (heaven) from here.

²⁸⁷ BDS I.21.3 ś k na y r ayacchan s as ā obha oh āh.

²⁸⁸ MBh XIII.95.72 dadā kanyā ś k na.

²⁸⁹ MGS I.7.11 sa s ā dhar no a yacch a brāh na ś k na ā.

The repetitive notion here appears to be that *ś ka* is not characterised as a merely, one-sided transaction or bride-price. But rather the idea expressed here, as Jamison (1996: 213) explains, is that of a wedding gift that “elicits a complementary counter-gift”. In her estimation the cycle of gift-giving in this picture is one where one gift completes the other; that the transfer and “traffic” of gifts creates and completes two worlds virtually weaving them into a tapestry of text. The idea that earth and heaven, in possibly a more secular sense,²⁹⁰ are knit together with the operative gift of rain, as the producer of progeny and renewer of life completes the picture in terms of an early Vedic notion of complementarity. As Jamison says (1996: 213) “the traffic of gifts from here to yonder and yonder to here knits together the two worlds again and makes life possible”. If *ś ka* is used to represent this reciprocal act, and behaviour, then surely the later texts should not so categorically classify it as tantamount to the sale of one’s daughter. For instance the ViSm XXIV.24 treats it in the bluntest possible terms, in Sanskrit it reads as one word: *krayenāsurah*; in translation it is at least an entire sentence. However, the dismissive disdain is clear. The evolution in meaning and, perhaps to some extent, the practical value of the *ś ka* may in part account for the “extreme ambivalence” (Jamison, 1996: 213) demonstrated in response to the *Ās ra* form of marriage in the dharma texts. Further, this marriage is in theory clearly condemned, in legal texts²⁹¹ and in the epics.

The *Gandharvavivāha* seems to have been current and is somehow assumed to be most natural during the *dc* period, and is therefore considered the oldest (Pandey, 1969: 162). It finds mention in the V VI.30.6, and in the AV VI. 36. According to *Gautama* and *Harita* it is that form of marriage where the girl selects her own husband, and as V . 27.17 proclaims, “that *vadhu* alone was *bhadra* who, brilliantly attired, herself selected her mate, even in the midst of an assembly” (Pandey, 1969: 162). It is also described as “that... where a man and a woman having entered a contract approach each other” in ĀśGS I.6, and comes closest to being considered a contractual union. The form itself suggests that the exchange or gift giving would be considered part of the joint property of the married couple. Items given would possibly

²⁹⁰ In a personal sense I find the classification of these early modes of worship as purely religious uncomfortable in terms of imposing western notions of instituted religious norms. The texts reflect in my view a rather more speculative tone in terms of gods, and heaven which the Chicago school tend to gloss over in using the terms more readily as clearly and identifiably theistic in tone.

²⁹¹ MDŚ III.51-54; ĀpDS II.13.11; BDS I.21.2; MBh I.213.4, XIII.45.19-20, XIII.95.72. For further detail and references with regard to Āsura marriage conceptualisations in the texts, and modern analysis see Kane HDŚ II.1 (1961: 503-9, 519); Chatterjee (1978: 38); Apte (1978: 145-149).

include household goods intended to help the couple set up their new home. The mention of the brilliant attire, and the evidence cited from V . 27.12 attest the fact that the wealth of the girl was an asset. It made her further desirable to a suitable groom. The notion of moveable wealth, worn on the body, before a monetised economy or society is not difficult to understand.

Not many rituals are associated with this form of marriage as the pair consummated it probably with relative acceptance from their kinsfolk. This marriage form was considered praiseworthy being based on mutual attraction and love, but was not considered stable since parental guidance was irrelevant to the union. On moral and ritual grounds, too, it was not considered an ideal form.²⁹²

Raksasa, described as “the capture of a bride by force while she is still weeping, having killed, scattered and injured her relatives” (Pandey, 1969: 160), is that form of marriage where the element of father's consent or that of the girl is irrelevant.

Paisaca, the least approved form, involved gaining possession of a bride through ‘fraud’. According to the *Asvalayana Grhyasūtra*, “carrying off a girl, who was sleepy, intoxicated or unconscious, was called *paisacha*” (Pandey, 1949: 274), and was severely criticised as an unacceptable form. Kane and others argue that this form reflects the possibility to regulate society where there were unions created during unnatural times of war.

In these last two forms of marriage an element of force is recognisable, which clearly does not allow for any idealisation, rather it explains the taboo related to unions of such marriages. Clearly the taking over of the property and rights of the girl accompany these two forms of marriage; of the individual woman as well as her natal home. Therefore the concept of the voluntary giving or notion of gifting is absent altogether. The previous six forms discussed, on the other hand, clearly make mention of exchanges taking place during negotiations, the ceremony, as well as further obligations incumbent on the girl's family, maybe throughout her married life.

From the discussion above, specifically with reference to the various marriage forms noted in the *śāstra* literature it is clear that a process of idealisation is at work. Often, the manner in which the importance and centrality of marriage as a functional part

²⁹² In the modern context see Fruzzetti's discussion on this marriage form conceptually considered equal to 'love marriage' being openly ostracised as '*khara*' or bad—causing disharmony, particularly because it does not carry the ritual consent of the parents and perhaps even that of wider society.

of wider Vedic and later society goes, it may even be seen as the texts codifying an ideal. Thereby, in terms of marriage we have a mirror of what is desired to happen in society. The manner in which certain behaviour is enjoined clearly identifies early thoughts and preoccupations with the ceremonial drama of marriage, and it clearly conceptualises dowry as a necessary fixture within it (Fig. 6). To further highlight this process of idealisation a perusal of the verses themselves is required, and the following sections are concerned with this.

5.3 Textual analysis

The primary aim of this thesis is to trace the development of dowry as a custom from its earliest conceptualisation to its current form, therefore the period under survey is substantial, charting modern to ancient sources and vice versa. As the historical period under review here is vast, however the discussion focusses specifically on ancient India. This then raises the question, what do I mean by the rather sweeping term “ancient India”? Specifically this refers to a period beginning with the arrival of Indo-Europeans in c. 1500 BCE and lasting until approximately the time of Asoka (3d c. BCE). This historic period, of approximately twelve hundred years encompasses the Vedas and their associated texts, including older legal texts and the older strata of Sanskrit epics, in particular the *Mahābhāra a.*²⁹³ This literary period provides researchers with some of the most extensive documentation from any ancient society. The material available reflects and records the tumultuous transition from the pastoral society of the Indo-Europeans who entered the *Saptsindhu*²⁹⁴ region of north-western India to the very different social and political organisation of “classical” post-Vedic civilisation. These primary sources record in extraordinary detail the concerns of a small-scale mobile, non-sedentary society, their complex ritual religious practices as well as, and of particular concern to us here, the religious and social challenges and the subsequent accommodations to these challenges that evolved over this period. Tomes of tradition were developed, as we have

²⁹³ The research in this thesis cannot include within its limited scope the culture and practices of the pre-Sanskrit Indus Valley civilisation; although comparisons and co-relations between the two would be a fascinating research project to be taken up at another time, when the language of the Indus people becomes finally accessible.

²⁹⁴ The confluence of the seven ancient rivers of India is often referred to as *Saptsindhu* or ‘the land of the seven rivers’. The river Sindhu has deep significance for the nomenclature associated with ancient India, including the very name finally given to the sub-continent. Sindhu, corrupted to Indus, and finally to India, because the Arab traders frequenting the region were supposedly unable to pronounce the ‘S’ (Keay, 1987: 86).

seen in chapters 2 and 3, and in a number of areas—law, astronomy, medicine, statecraft, and grammar to name a handful. And all of this is achieved in a textual tradition of exceptional narrative prowess and literary sophistication. In the search for dowry through this vast material the research needs to remain focussed on expectations rather than just linguistic clues linked directly with the custom alone.

The primary sources which we treat as texts, as in traditional cultural texts, from this period have a religious leaning in some or other sense of the word. However each type of text deals with a different aspect of religious and sometimes domestic or even secular life; these broadly may be categorised as ritual, legal and literary. Before the main task of evidence gathering can begin it is worthwhile to note the classification of these ancient texts within the three categories as described in chapter 1, but here delved into in some detail for non-specialists:

Ritual:

Considered the very oldest texts in the vast collection of this ancient culture are the four Vedas; the *ṛg*, the *Sama*, the *Yajur*, and the *Atharva*. These four collections comprise verses dedicated to ritual formulae for pronunciation and recitation during ritual ceremonial practices. The rituals may be solemn public or even semi-public, and of course life-cycle rituals (including birth, marriage, funeral but also shaving a boy's head for the first time) healing rituals (including those to bring on afflictions), white and black magic generally. The two collections of particular note here are the first and last: the *ṛgveda* and the *Atharvaveda*, the first concerned with conceptual clues and the second with magical pronouncements from the earliest period of this ancient culture.

Further to these ritual-internal texts we have accompanying treatises associated with each, which may be noted as the ritual-external texts. These describe in specific detail every action to be undertaken by every participant in the whole ritual structure of that society. These have been called ritual manuals, and are concerned with solemn (*shrāuta*) rites, requiring a host of priests (in the *shrāuta sūras*), but also in the *grhyasūras* domestic (*grhya*) rituals to be performed within the household as part of the prescribed stages of life, including those concerned with mundane preoccupations of daily life. In addition there are the exegetical texts which presuppose the *shrāuta sūra* rituals, and supply commentary on the meaning and purpose of the rites of each individual ritual. Apart from giving a clear picture of the expanse and concerns of Indic theology these texts are credited as a valid source for mythology and folklore.

Accounting for the primarily patriarchal means of textual preservation,²⁹⁵ we can say that these ritual texts do not focus on or indeed describe women's rituals per se. It must be noted, though, that women are considered necessary participants not just in the domestic realm but also in the solemn public rites.²⁹⁶ However, due to a vast number of these texts remaining un-translated they remain inaccessible to most scholars. In this way the worldview of this far removed society remains the purview of the few specialists. Most non-Sanskritists, including non-specialists, have no access to this.

Further, this wealth of material has not yet been examined for the depth of detail it can provide on and about women and their preoccupations in ancient India. Interestingly, it is the fullness of the minutiae and the detail these texts provide which makes their relevance to this thesis invaluable. By exploiting this material extensively it becomes possible to observe some of the things that these texts do not know that they are saying. As Jamison (1996: 10) notes,

“The women acting in the ritual are not the point of the texts; as we will see, they are fairly marginal at least in terms of the composers' focus. They are neither demonized nor divinized as fictional exemplars so often are. They simply sit in the background, waiting to perform their little tasks – carry the little pot of water or exchange glances with a priest. But when we assemble the little tasks, they produce a remarkably telling conceptual portrait.”[emphasis added]

It is this conceptual portrait that we seek to align alongside the conceptual framework which emerges for the functioning of dowry as a custom within the context of Hindu marriage, because it helps a little in understanding what we are dealing with in the bigger picture of answering the main aim of this thesis.

Legal:

Of the several treatises concerned with *dharma* (law, very broadly as it is most often translated) the one most repetitiously quoted is the one ascribed to Manu, the *Māna a Dharma- ā stra* (MDS)²⁹⁷ perhaps because it is considered the most orthodox in tone. As we noted, be orthodox or be forgotten, this particular school certainly achieved a high status using these means. Classified for at least a hundred years now within the wider

²⁹⁵ See chapter 2, specifically section 2.2, and chapter 4, particularly section 4.1 which describes the means of diligent preservation and propagation of the textual material as being the domain of men.

²⁹⁶ See for more detail Leslie (1991) and Jamison (1996), for discussions on the contradictory role and status play accorded to women throughout this ancient period.

²⁹⁷ See chapter 2 for a more detailed analysis of the importance afforded to this treatise, even though it is not among the oldest.

academic community and widely considered as law codes, these are not judicial or legislative codes in the ordinary sense.²⁹⁸ Although, quite often severe penalties are laid down for numerous even petty infractions, an enforcing body or judgment authority is never made quite clear. In fact the texts present themselves more as idealised codes of conduct. Clearly the conceptualisation of *dharma* included, and perhaps we can say continues to include, an element of ‘duty’ alongside ‘law’. Further, in a modern context these ‘codes’ contain several areas of life within their gamut, which we would not conceive of as being part of the legal domain. The texts agree in broad outline, in most provisions they make, but differ or even contradict themselves on others. The various codes though not linguistically very old, appear to be the very same reworked older material in places. It is agreed among most scholars that for pertinent research purposes we should assume a code with fixed verbal formulae at least by the time of the earlier Sanskrit prose compositions (prior to 1000 BCE).

Literary:

Interestingly, though considered the realm of myth and folklore in the western world today and during translation, the Sanskrit epics, in particular the Mahābhārata (MBh), qualify traditionally as *dharma* texts. In fact, extensive sections of the MBh, specifically Books 12 and 13) contain threads of legal maxims sometimes closely associated, if not identical to the *dharma śāstras*. At times these are mixed in with learned or even legal discussions and disputes in narrative form. Far more pertinent to our purpose is the manner in which narrative is used to overtly and covertly illustrate, and thereby disseminate *dharmic* issues. The narratives show *dharma* in action, how ‘duty’ and ‘law’ may be transgressed or fulfilled through the miscarriage or neglect of particular precepts in particular cases. Of course we cannot assume to afford modern case-law status to this realm of the heroic epic, however it would be misleading to read the epic content without an awareness of the legal and religious duties that the participants enact or ignore. Importantly, the disagreements and contradictions within the legal tradition are almost entirely ignored. Further, the correlation or interrelation between these *idealised* rules of conduct in the legal codes and the *idealised* narratives where the selfsame *dharmic* principles are demonstrated are neither applied nor established as important.

²⁹⁸ Chapter 3 takes up this discussion at some length to delineate the position this thesis affords this area of the literature for the present purpose, and although relevant will not be repeated here.

For the purpose of elaboration in this thesis I refer to the extensive research carried out by Professor Ronald Inden on the cultural categories maintained into contemporary times by Bengali society. The sources he uses are relevant here because they deal specifically with the transactory nature of marriage and the mobility of caste and clan rank through marriage in this society. Because there is such a vast array of sources from the medieval period it is possible to relate similarities to the old Vedic material, with which most of these commentarial texts claim allegiance. Pertinently, these texts continue to be used for modern day marriage ceremonies, and are therefore vital clues to the nature of the mindsets at play. As has been extensively studied, (see Dumont, Vatuk, and Karve), historically the higher castes in India have been organised into lineages or ranked clans. In Bengal the highest Hindu castes are the *Brahman*, or the priest and the Kayasth, or the writer. Their organisation also follows a similar widespread pattern of lineages, and the in further internal organisation tends to be complex. However, a cursory understanding of these two castes is important at this point in order to contextualise the gift giving patterns of behaviour linked with their systems of marriage and the accruing benefits of superior rank.

Now the genealogical records or books of clan rank of the *Brahmans* and Kayasthas, which form the bulk of the evidence for attitudes to marriage in medieval Bengal, are contained in what have been called *kulaji*, *kula-panjika*, *kula-karika*. Written in Sanskrit, and sometimes also in Bengali, these texts are considered the corporate property of the sub-castes. They are still recited, usually from memory, at marriages and kept updated by professional genealogists known as *ghataka*, who are a sub-caste in themselves. The contents are judged for accuracy at the time of recitation by the assembled wedding party, and often this has to be approved before the *ghatakas* get their honorarium. These texts can be considered the corporately approved “charters” of the sub-castes (Inden, 1976: 2-3). The section of these texts most relevant to this study is that concerning the codes of the clans and their actions, or the *kula dharma* and the *kula-karma* enjoined to help preserve the clan rank during the medieval period. Most of these actions centre on the actions prescribed for the *vidhana* or rules governing the “gift” or *dāna* and acceptance *grahana* of daughters or *kanya* in marriage (*vi āha*). Most importantly, these prescriptions include the honorific gifts of wealth or *pana* to be made at the occasion of marriage. These codes presuppose knowledge of the earlier Sanskrit

texts on codes of conduct like the *dharmasās ras* and these *kulajis* often cite passages from these older texts.

Among the numerous researchers who worked on the genealogies and clan charters of the medieval period in Bengal the work of Nagendranāth Vasu seems most important (Inden, 1976: 4).²⁹⁹ The gathering of these disparate and often bulky scrolls of text was definitively published in the collection *Vanger Jātiya Itihāsa*, or the history of Bengali castes, and the majority of the medieval references which follow in the discussion below stem from this text.

The analysis here therefore charts the ancient and medieval mindsets recorded through idealised narrative schemes and apparent rules in the layers of text we have from these two periods.

5.3.1 Expectations in *va da* X.85

In an adjunct text, the *hadda ā* often considered linked to the *eda* and therefore authoritative, there is an *itihāsa* recounted about the buying of a bridegroom. It is of particular interest to the evidence in this thesis because it points clearly to the expectations asserted in the texts, through this systemic story-telling, at such an early stage of the literature. The story or *itihāsa* goes that the young poet Kak īvat, the famous seer and poet Dīrghatamas's son, falls asleep in the forest. He is found by a king, asleep. This king is struck by his beauty and considers him to be an ideal candidate for a son-in-law. The verses record a negotiation between the king and the sleepy boy. They continue the negotiation and then settle on an agreement of terms. The king goes on to bestow his prospective son-in-law with manifold wealth. In fact the story closes with an intricate description of the wealth the boy gains: numerous chariots, strong steeds all yoked in auspicious fours, brass and other ornaments. The young poet thanks the king for the gifts, singing a *mantra* or chant, from the *eda* (I.125).

Interestingly, to add to the valuable clues we gain from the interpretation of these verses a commentarial complication arises in assigning a voice to the verse, which is in praise of the good fortune of the person who has received such an abundance of wealth

²⁹⁹ Inden asserts that it is unreliable to pay too much heed to the glorified origins that Vasu argues for the Kayastha and *Brahmans* of Bengal. The historian R C Majumdar has added valuable insights into these early arguments by securing the original manuscripts which formed Vasu's collection for the University of Dacca where he became vice-chancellor. Majumdar re-examines much of Vasu's argument in his *History of Bengal*, Vol. I (1943) after Vasu's death.

and gifts. According to Patton (1996: 275) in true Vedic dialogic style, this verse might have been interpreted as a reply from the king; however, it is not so straightforward. The commentaries engage in great discussion and the final consensus is reached that the speaker of the verse in great praise of wealth, is either the boy himself or his father. Patton raises an important point, why such intricate to-ing and fro-ing about a simple matter of ownership of voice in V I.125.2? Are they being simply pedantic? It appears not; as Patton (1996: 275-304) discusses these issues point to something far deeper. The entire group of stories contained in the later narratives of the *hadd a ā* attest to the importance of money and materialism, but not in mere expressions of mundane acquisition. No, in Patton's belief, these stories underlie the very core of Vedic discourse, throughout the literary tradition of a pre-occupation of language as a medium of exchange. And in the context of that exchange the relative value of words and wealth grow and evolve in the early and later Vedic period. While in the *da* and a number of early collections/compilations there is a fluidity of exchange between words and wealth, in the later stories of the *hadd a ā* a clear connection between power and the utterance of words has developed. Therefore these later verses will permit a king to bestow wealth but not have the privilege to utter *mantras*.

What this interpretive analysis makes evident is the notion that throughout the composition/compilation stages of the literature ideas about wealth and its importance grew and changed. However, crucially the juxtaposition of mythology and money creates, or tends to create, quite intense methodological reactions. The seemingly irreconcilable difference between the symbolic and the concrete, the figurative and the economic, frequently encourages mythologists to see one in terms of the other (Patton, 1996: 276).³⁰⁰ These ideas cause great concern for those who see Vedic Literature in purely mystical or spiritual terms. I will argue below in section 5.3 that in fact, Vedic materialism is at the core of an adequate understanding of how dowry as wealth comes to occupy such a central position in the field of marriage past and present.

In the *ūr yās k a*, or verses dedicated to *ūr yā*³⁰¹, we find the unusual usage of a single word, *āha*. In Sanskrit, this word bears as its root the word *āh*. There are only

³⁰⁰ See Silver (1992: 73) for an examination of ancient mythologies linked to money in a Mediterranean context.

³⁰¹ Not to be confused with *ūr ya*, the Sun deity, who is cast as her father in this set of verses. Sūryā is also considered an alter-ego of an elemental early Vedic goddess *āc*; see Patton (1996: 170). This has important repercussions from a literary perspective to understand the elemental nature of the marriage

a handful of times that the term appears in Vedic literature as noted by Bloomfield in his Vedic Concordance. Three times in the marriage verses of V . 85, in the body of the text. And a few more times in the body of the AV Book 14, which also deals with marriage rites. From Max Müller’s research a curious connection may be found with a similar word that keeps making an appearance in sacrificial verses, *āhn* . According to Müller, the context in which the word reappears helps to identify its translation as “sacrificial flames” (1869: 25). In a translator’s note he expresses a similar observation to later researchers who found *āhtu* a difficult word to comprehend:

āhn is in fact a most difficult word in the Veda. In later Sanskrit it means fire, and is quoted also as a name of Agni, the god of fire, but we do not learn why a word which etymologically means carrier, from *āh*, to carry, should have assumed the meaning of fire. It maybe that *āh*, which in Sanskrit, Greek, and Latin means chiefly to carry, expressed originally the idea of moving about (the German *be-wegen*), in which case *āh-ni*, fire would have been formed with the same purpose as [page 26] *ag-ni*, *ig-nis*, fire ..., *ag-o*. But in Sanskrit Agni is so constantly represented as the carrier of the sacrificial oblation, that something may be said in favour of the Indian scholastic interpreters who take *vāhni*, as applied to Agni, in the sense of carrier. However, that may be, it admits of no doubt that *vāhni*, in the Veda also, is distinctly applied to the bright fire or light. In some passages it looks very much like the proper name of Agni, in his various characters of terrestrial and celestial light. It is used for the sacrificial fire:

v.50, 4. *ya ra āhn h abh -hitah*

Where the sacrificial fire is placed.

It is applied to Agni:

vii. 7, 5. *asad r ah āhn h a-gaganvan agnih Brahma.*

The chosen light came nigh, and sat down, Agni, the priest.

Here Agni is, as usual, represented as the priest, chosen like a priest, for the performance of the sacrifice. But, for that very reason, *vāhni* may here have the meaning of priest, which, as we shall see, it has in many places, and the translation would then be more natural: He, the chosen minister, came near and sat down, Agni, the priest.

viii. 23, 3. *āhn nda as .*

Agni finds wealth (for those who offer sacrifices?)

More frequently *vāhni* is applied to the celestial Agni, or other solar deities...” (Max Mueller, 1869: 25-26)

verses. As a non-Sanskritist I am unable to unpack this further, and the relevance and importance of this link must be made by the appropriate experts of grammar and linguistics.

From this discussion we may make a number of associated assumptions; especially that words are replete with meanings not always clearly evident within themselves. But when taken in context and particularly with reference to behaviour enjoined by certain linked verses, one may gather a clearer view of what may be taking place.

In particular the significance and link of the elusive word *āhn* to the word *āha* / *āha m*, which appears in the marriage verses of *da* X.85, is important to underline.³⁰² To understand the nature of these dowry-related transactions; was it demanded or given freely? Any assertions about voluntary dowry endowments are rooted in the assumption that Hindu arranged marriages tend to be hypergamous, so such assertions may be questioned. Marrying one's daughter to a groom from a higher caste represents a clear desire to better one's social standing. This is one simplistic explanation of how and why dowry endowments may have assumed such monstrous proportions. It is perceived as buying into a higher status. Dowry as a marriage transaction represents an intricate socio-economic phenomenon with religious undertones. To analyse these undertones we need to carefully examine the textual evidence.

A craving for spiritual and secular benefits might be traced to the *da* (1.54.9; X.49.1) where the hymns bear direct reference to hopes for both spiritual and material benefit. The divine prototype for human marriage is the hierogamy of Sūryā (daughter of Sūrya, the sun) and Soma (here for the only time in the *da*, regarded as the moon, as well as the sacred plant and its expressed juice). Later marriages are modelled upon this one, and the bride is called Sūryā in emulation of the model marriage. The first nine or ten verses refer back to Sūryā (vv.20, 35 and 38) and to Soma (40-41), though the former seems merely to designate the bride and the latter is a reference to Soma in his alternate aspect, his *droit de seigner* over all brides. Verses 20-47 present formulaic verses, some of a highly magical nature, to be recited at a human wedding (Doniger, 1981: 267).

The Sūryāsukta verses

The Marriage of Sūryā, RV .85

- 1 The earth is propped up by the truth; the sky is propped up by the sun. Through the law the Ādityas stand firm and Soma is placed in the sky.
- 2 Through Soma the Ādityas are mighty; through Soma the earth is great. And in the lap of the constellations Soma has been set.

³⁰² However, as neither a Sanskritist nor a philologist, a detailed deconstruction and linguistic analysis of the correlations between these two words, their context and occurrence in the literature, and their significance to the ceremonial rituals surrounding marriage past and present must be undertaken to further clarify the role of dowry in Indian in both ancient and modern times.

- 3 One thinks he has drunk Soma when they press the plant. But the Soma that the *Brahmanas* know – no one ever eats that.
- 4 Hidden by those charged with veiling you, protected by those who live on high, O Soma, you stand listening to the pressing stones. No earthling eats you.
- 5 When they drink you who are a god, then you are filled up again. Vāyu is the guardian of Soma; the moon is the one that shapes the years.
- 6 The Raibhī metre was the woman who gave her away; the Nāvāsamśī metre was the girl who accompanied her. The fine dress of Sūryā was adorned by the songs.
- 7 Intelligence was the pillow; sight was the balm. Heaven and earth were the hope-chest when Sūryā went to her husband.
- 8 The hymns of praise were the shafts and the metre was the diadem and coiffure. The Aśvins were the suitors of Sūryā, and Agni was the one who went in front.
- 9 Soma became the groom and the two Aśvins were the two suitors, as Savitr gave Sūryā to her husband and she said ‘Yes’ in her heart.
- 10 Thought was her chariot and the sky was its canopy. The two luminaries were the two carriage animals when Sūryā went to the house.
- 11 Your two cattle, yoked with the verse and the chant, went with the same accord. You had hearing for your two wheels. In the sky the path stretched on and on.
- 12 The two luminaries were your wheels as you journeyed; the outward breath was made into the axle. Sūryā mounted a chariot made of thought as she went to her husband.
- 13 The wedding procession of Sūryā went forward as Savitr sent it off. When the sun is in Aghā “they kill the cattle, and when it is in Arjunī” she is brought home.
- 14 When you Aśvins came to the wedding in your three-wheeled chariot, asking for Sūryā for yourselves, all the gods gave you their consent, and Rīsan, the son, chose you as his two fathers.
- 15 When you two husbands of beauty came as suitors for Sūryā, where was your single wheel? Where did you two stand to point the way?
- 16 Your two wheels, Sūryā, the *Brahmanas* know in their measured rounds. But the one wheel that is hidden, only the inspired know that.
- 17 To Sūryā, to the gods, to Mitra and Varuna, who are provident for all creation, to them I have bowed down.
- 18 These two “change places through their power of illusion, now forward, now backward. Like two children at play they circle that sacrificial ground. The one gazes upon all creatures, and the other is born again and again marking the order of the seasons.
- 19 He becomes new and again new as he is born, going in front of the dawns as the banner of the days. As he arrives he apportions to the gods their share. The moon stretches out the long span of life.
- 20 Mount the world of immortality Sūryā, that is adorned with red flowers and made of fragrant wood, carved with many forms and painted with gold, rolling smoothly on its fine wheels. Prepare an exquisite wedding voyage for your husband.
- 21 ‘Go away from here! For this woman has a husband.’ Thus I implore Viśvāvasu with words of praise as I bow to him. ‘Look for another girl who is ripe and still lives in her father’s house. That is your birthright; find it.
- 22 ‘Go away from here, Viśvāvasu, we implore you as we bow. Look for another girl, willing and ready. Leave the wife to unite with her husband.’
- 23 May the roads be straight and thornless on which our friends go courting. May Aryaman and Bhaga united lead us together. O Gods, may the united house be easy to manage.
- 24 I free you from Varuna’s snare, with which the gentle Savitr bound you. In the seat of the Law, in the world of good action, I place you unharmed with your husband.

- 25 I free her from here, but not from there. I have bound her firmly there, so that through the grace of Indra she will have fine sons and be fortunate in her husband's love.
- 26 Let Pūsan lead you from here, taking you by the hand; let the Aśvins carry you in their chariot. Go home to be mistress of the house with the right to speak commands to the gathered people.
- 27 May happiness be fated for you here through your progeny. Watch over this house as the mistress of the house. Mingle your body with that of your husband, and even when you are grey with age you will have the right to speak to the gathered people.
- 28 The purple and red appears, a magic spirit; the stain is imprinted. Her family prospers, and her husband is bound in the bonds.
- 29 Throw away the gown, and distribute wealth to the priests. It becomes a magic spirit walking on feet, and like the wife it draws near the husband.
- 30 The body becomes ugly and sinisterly pale, if the husband with evil desire covers his sexual limb with his wife's robe.
- 31 The diseases that come from her own people and follow after the glorious bridal procession, may the gods who receive sacrifices lead them back whence they have come.
- 32 Let no highwayman, lying in ambush, fall upon the wedding couple. Let the two of them on good paths avoid the dangerous path. Let all demonic powers run away.
- 33 This bride has auspicious signs; come and look at her. Wish her the good fortune of her husband's love, and depart, each to your own house.
- 34 It burns, it bites, and it has claws, as dangerous as poison is to eat. Only the priest who knows the Sūryā hymn is able to receive the bridal gown.
- 35 Cutting, carving, and chopping into pieces – see the colours of Sūryā, which the priest alone purifies.
- 36 I take your hand for good fortune, so that with me as your husband you will attain a ripe old age. Bhaga, Aryaman, Savitr and Purandhi – the gods have given you to me to be mistress of the house.
- 37 Pūsan, rouse her to be most eager to please, the woman in whom men sow their seed, so that she will spread her thighs in her desire for us and we, in our desire, will plant our penis in her.
- 38 To you first of all they led Sūryā, circling with the bridal procession. Give her back to her husband, Agni, now as a wife with progeny.
- 39 Agni has given the wife back again, together with long life and beauty. Let her have a long life-span, and let her husband live for a hundred autumns.
- 40 Soma first possessed her, and the Gandharva possessed her second. Agni was your third husband, and the fourth was the son of man.
- 41 Soma gave her to the Gandharva, and the Gandharva gave her to Agni. Agni gave me wealth and sons – and her.
- 42 Stay here and do not separate. Enjoy your whole life-span playing with sons and grandsons and rejoicing in your own home.
- 43 Let Prajāpati create progeny for us; let Aryaman anoint us into old age. Free from evil signs, enter the world of your husband. Be good luck for our two-legged creatures and good luck for our four-legged creatures.
- 44 Have no evil eye; do not be a husband-killer. Be friendly to animals, good-tempered and glowing with beauty. Bringing forth strong sons, prosper as one beloved of the gods and eager to please. Be good luck for our two-legged creatures and good luck for our four-legged creatures.
- 45 Generous Indra, give this woman five sons, and the good fortune of her husband's love. Place ten sons in her and make her husband the eleventh.
- 46 Be an empress over your husband's father, an empress over your husband's mother; be an empress over your husband's sister and an empress over your husband's brothers.

- 47 Let all the gods and the waters together anoint your two hearts together. Let
Mātariśvan together with the creator and together with her who shows the way join
the two of us together.³⁰³

As far as the conceptual positioning of this *mandala* or collection of verses goes, there is little doubt that a model of sorts is being spun. The intent is clear. A model pairing are chosen to carry the ideal, to make it more real for the human pair who will witness and understand the enormity of the ritual process they are about to undergo. The male model husband is Soma,³⁰⁴ and the bride to-be is Sūryā, the daughter of Savitr. As the girl in the role of the bride is called Sūryā, her sun-god father is given his alternate name of Savitr, although to witnesses in early, and possibly also later Vedic times, these fine differences of naming would have needed no explanation. For instance, the assumption that those present, or hearing these verses were also aware of Sūryā as another name for the goddess Vāc. In cosmic terms this knowledge lends greater importance, influence and a note of status superiority to the hierogamy of the union of the gods and what it will represent and enjoin in the minds of the mortals. If Soma is cast as the Moon, and is set to marry the daughter of the Sun, the relevance of the cosmogony is evident in the roles that Sun and Moon play and therefore the importance they hold in an ancient animistic society. However, if we add to this the dimension represented in the alternate meanings attached to these very names, as Soma being the juice, or the highly prized hallucinogenic, and Sūryā as Vac, then the nature of what these verses signify changes. It then becomes ritually and grammatically a still more significant set of verses, giving us an additional insight into what the composers were attempting. The prototype for human marriage is no longer merely a cosmic model in terms of a divine marriage, but also the much more potent marriage of ritual to speech. In Vedic terms this identification is immense. If these verses mean to set in motion the very basis of the Vedic world coming into being, the ideal they represent is far more meaningful not just for us in this distant time, but for the human couples who are subject to this ritual in several Vedic communities across several millennia.³⁰⁵

³⁰³ Taken here from Doniger's (1981: 267-274) more recent translation; for an older translation see Griffith's (1892).

³⁰⁴ See a notable aside on the reasons why Soma is not quite a model husband, as observed by Macdonald (1896: 175-176) weighed against the model of monogamy in a late Victorian context.

³⁰⁵ See Patton (1996: 166-171) make an illuminating assessment of the language, etymologies and cosmology of the early Vedas, with particular reference to the goddess *āc*.

In terms of other relevant expectations listed in this most idealised of texts, a number of quotations tend to devise an ideal of behaviour with regard to finding a suitor, to marrying a daughter, and to securing a good marriage. All of these enjoin acts of good behaviour. An ardent but “undesirable suitor” according to the *da* elsewhere, attempts to please the father of the bride with large amounts of money:

Asravam hi bhuridavattara vam vijamatur uta va gha (*gveda* I. 109.2).

The term *vijamata* has been interpreted as the husband of a woman who is purchased. An exceptional reference is made in *V* . 23.111 where it is deemed acceptable to “dispose of with money [sic] a daughter who had “physical defects”. The compensatory element of this payment is noteworthy; as it displays a value system entrenched in physical beauty.

V . 27.17 proclaims, “that *vadhu* alone was *bhadra* who, brilliantly attired, herself selected her mate, even in the midst of an assembly” (Pandey, 1969: 162).

The mention of the brilliant attire, and the evidence cited from *V* . 27.12 attest the fact that the wealth of the girl was an asset, and desirable. This exchange is more acceptable than the sale of one’s daughter. Interestingly, plying the groom with wealth is not considered ‘buying’ him for the girl. In terms of “Vedic materialism”³⁰⁶, too, there is enough evidence to be certain that the wide term ‘dowry’ has Vedic roots.

5.3.2 *Atharvaveda* Book 14

The verses in this book are dedicated entirely to the more intricate rituals concerning the manner in which a marriage must be conducted. In clear correlation the verses of AV 14.1 begin by quoting the reference, and thereby delineating an allegiance to RV X.85 and its verses. Interestingly there is some detail and emphasis on the safe passage of the bridal carriage and the couple from the point of marriage onwards. These verses are particularly relevant to the conceptualisation of wealth being transacted at this point in the proceedings and are therefore important to consider here.

AV 14.1

7. The *rāibhī* was the parting [song]..., the *nārāṇsī* was the welcoming one; Sūryā’s garment verily was excellent; she goes adorned with song (*gatha*)

13. The bridal (*āha*) of Sūryā, which Savitar sent off (*ava-srj*), has gone forth; in the Maghās are slain the kine; in the Phalgunī’s is the wedding.

³⁰⁶ See for much detail Uma Gupta’s (1987) analysis of where materialism should feature i.e. beside the other more base human instincts.

14. When, O Aṇvins, ye went asking, with your three wheeled [chariot], to Sūryā's bridal, where was one wheel of yours? Where stood ye for pointing out?
40. Weal be to thee gold, and weal be waters; weal be the post (*methi*), weal the perforation (*tardman*) of the yoke; weal be for thee the waters having a hundred cleansers (*pavitra*); for weal, too, mingle thyself with thy husband.
42. Hoping for well-willing, offspring, good-fortune, wealth, becoming obedient (*anuvrata*) to thy husband, gird thyself in order to immortality.
55. Brihaspati first prepared (*klp*) the hairs on the head of Sūryā; with this, O Aṇvins, do we thoroughly adorn (*cubh*) this woman for her husband.
61. The well flowered (*sukiincuka*), all-formed bridal-car (*āha*), golden-coloured, well-rolling, well-wheeled, do thy mount, O Sūryā, to the world of the immortal; make thou a bridal-car pleasant to husbands.

AV 14.2

1. For thee in the beginning they carried about Sūryā, together with the bridal-car; mayest thou, O Agni, give to us husbands the wife, together with progeny.
2. Agni hath given back the spouse, together with life-time, with splendour; of long life-time, may he who is the husband of her live a hundred autumns.
10. What *yāk as* go to the brides brilliant (*candrā*) car among the people, let the worshipful gods conduct those back whence they came.
12. I cause the bridal-car to be viewed by the houses with worship (*brāhman*), with a friendly, not terrible eye; what of all forms is fastened on about, let Savitar make that pleasant for the husbands.
30. The gold-cushioned (*ras ara a*) vehicle, bearing all forms, did Sūryā, Savitar's daughter, mount, in order to great good-fortune.
41. This bridal garment and brides dress, given by the gods together with Manu, whoso gives to a knowing (*c k āns*) priest (*brāhman*), he verily slays he demons of the couch.
42. What priest's portion they (dual) give to me the bride-seeker (*adhūyū*), the bridal garment and brides dress, do ye, O Brihaspati and Indra, assenting, together give it to the priest (*brāhman*).
70. I gird thee with the milk of the earth; I gird thee with milk of the herbs; I gird thee with progeny, with riches; do thou, being girded, win (*ā-san*) this strength (*ā a*).

The implications of this textual model cannot be analysed here in detail, it would go far too far in terms of ritual changes and priestly involvement in the marriage rituals. Details are found in Menski (1984). The number of times the term *vāha* occurs however, are more in number than in the RV X.85. The verses also display more concern for the safe passage of the couple after the wedding rituals are completed, with specific mention of their being laden with wealth. What is most evident is that the pattern is set: marriage involves also economic transactions and is not just a ritual activity or a legal process.

5.3.3 Expectations in the *S* literature

In Derrett's research the texts "constitute two threads which ran right through the law as it was expounded in early mediaeval times" (1957: 84) particularly with marriage-related practices. A number of quotations from this layer of texts points to the idealising process continuing by the *śās r kars* in an effort to hold up as ideal one particular form of

marriage, and its associated practices. Thereby this enjoins the custom of dowry to be repetitively rendered as the most ideal marriage prestations. The *Vaikhasanagrhyasū ra* III.3.1 indicates, for example:

When a damsel, well adorned, shall be given to a suitable (young man) of good conduct and in the prime of life who has been invited and honourable received (with the honey-mixture by the father himself), that is called the *Brahmana* form of marriage.

When he presents a damsel (*viz.* his daughter) to a priest who performs a sacrifice of his own (*viz.* of the giver's), after having adorned her, that is called the God-form of marriage.

When by the words: "May both of them together perform their duties" he gives his consent and, having himself performed the rite (of the āghāra) into the fire, gives away his daughter, after having shown honour (to the bridegroom), it is the Prāgāpati-form of marriage.

When he gives his daughter in exchange for a cow and a bull or two pairs (of these), they call this the *ī*-form of marriage.

When he obtains a maiden, after having put ornaments on her and after having given to her kinsmen as much wealth as he can afford, they call that the *Ās ra* form of marriage.

When there is a union of both, out of love, that is the Gandharva-form of marriage.

When the maiden is forcibly abducted, that is the Rākasa-form of marriage.

When he cohabits with a damsel, who is sleeping or intoxicated, that is the Piśāca-form of marriage.

The first four of these forms of marriage, preceded by a gift of water, are approved for a Brāhmin, but not the last four. For a son born of a mother wedded according to the *ī*-form purifies three ancestors and three descendants; a son born of a mother wedded after the Prajāpati-form purifies six ancestors and six descendants; a son born of a mother wedded after the God-form purifies seven ancestors and seven descendants; the son of a mother wedded after a *Brahmana*-form purifies ten ancestors and ten descendants and himself as the twenty-first.

This text stresses the ornamentation of the girl, while the *Asvalayanagrhyasū ra* I.6.3 states that the girl suitably "bedecked" with ornaments must be given in marriage to an active priest:

Asvalayanagrhyasū ra I.6.1-3

1. (The father) may give away the girl, having decked her with ornaments, pouring out a libation of water: this is the wedding (called) *Brahma*. A son born by her (after a wedding of this kind) brings purification to twelve descendants and to twelve ancestors on both (the husband's and the wife's) sides.
2. He may give her, having decked her with ornaments, to an officiating priest, whilst a sacrifice with the three (Srauta) fires is going on: this (is the wedding called) *Daiva*. (A son) brings purification to ten descendants and to ten ancestors on both sides.
3. They fulfil the law together: this (is the wedding called) *Pragapatya*. (A son) brings purification to eight descendants and to eight ancestors on both sides.

The *Visnum ti* IV.29 stresses that one who gifts his daughter in this manner not only gains *svargam*, but also sends ten generations to heaven. This testifies to the highly meritorious nature of this union.

A son procreated in a *Brahma* marriage redeems (or sends into the heavenly abodes hereafter mentioned) twenty one men (viz. ten ancestors, ten descendants, and him who gave the damsel in marriage).

A son procreated in a *Daiva* marriage redeems fourteen persons, as *Visnus* XXIV.30 indicates. The *Gautamadhar as ū ra* IV.6 states:

(If the father) gives (his daughter) dressed (in two garments) and decked with ornaments to a person possessing (sacred) learning, of virtuous conducts, who has relatives and a (good) disposition, (that is a) *Brahma* (wedding).

This also clearly states that in this form of marriage the maiden is gifted away “bedecked with clothes and ornaments”. Another quote, from the *Manusm ti* III.27, echoes this practice:

“[W]hen a man dresses his daughter and adorns her and he himself gives her as a gift to a man he has summoned, one who knows [*Sm ti*] the revealed canon and is of good character” (Doniger, 1990: 45-6).

Gautamadhar as ū ra I, 4.5 characterises this union as one where the bride is gifted with a special *mantra* stressing their joint performance of religious duties:

At the *Prâgâpatya* (wedding) the marriage formula is, ‘Fulfil ye the law conjointly.’

While the *Baudhayanadhar as ū ra* I.11 20.3 states:

If (the father gives his daughter away) after clothing her and decking her with ornaments, (saying) ‘That (is thy wife), fulfil the law (with her), that (is) the rite of *Pragâpati* (*prâgâpatya*)’

This also elaborates the need to bedeck the bride and dress her in new clothes. This *Baudhayanadhar as ū ra* verse is explained by commentators as expressing the duty of the bride’s family to adorn her suitably (Chatterjee, 1974: 464). Sternbach (1965: 370) explains *Man s* III.56, in the light of commentarial writers who hold that women are honoured by giving gifts:

Where women are honoured, there the gods are pleased;
but where they are not honoured, no sacred rite yields rewards.

Man s III.59 makes a more general statement about gift giving:

Hence men who seek (their own) welfare, should always honour women on holidays and festivals with (gifts of) ornaments, clothes, and (dainty) food.

This becomes the possible reason why a dowry should be given, as a means of honouring women.³⁰⁷ The *Ās ra* form, in turn, was clearly looked down upon as the sale of one's children.

The girl is a prized asset in her natal home and her worth is weighed literally in gold. The *Kathakagrhyasū ra* outlines a separate set of rites for marriage, and within these the mention of gold is more than apparent (Chatterjee, 1974: 258). In the commentarial literature, too, the special occasion of marriage is highlighted in abundance. *Medhatithi* prescribes that the act of adoration with clothes and jewelleries [sic] be directed toward both bride and groom. Interestingly, these “adornments with clothes and ornaments should...be of a *special type befitting the occasion*” [emphasis added] and should reflect affection for the daughter and honour for the groom (Chatterjee, 1974: 370). This commentary, dated at approximately 800 BCE, clearly identifies the amount and nature of endowments at marriage, *inter alia* dependant on the qualities of the bridegroom. No indications are found, as far as I am aware, to warn about excessive use of finery and thus there is no indication of a ‘dowry problem’.

5.3.4 Re-iterating expectations in the epics

The key role of the epics seems to have been disseminating points of view and teaching on *dharma* and thus on social and cultural enjoinders through the medium of storytelling and mythological songs. This role is common to most narrative traditions universally. Of particular note here is the importance given to the *dharmic* role associated with the epic stories. The principles and behaviour these narratives compile and spread are often coded in terms of strings of legal maxims, virtually identical to those contained in the *dhar aś āstra* texts. There are accounts within this literary tradition of learned discussions of specifically legal questions, thereby illustrating guidance of how to tackle certain complicated situations, should they arise in real life.

To demonstrate how these narrative traditions contained in the epic poems of the *Mahābhārata* (MBh) and the *Rā āy a* (R) show *dharma* in action we examine some examples presented here which have a specific bearing on how expectations govern

³⁰⁷ Mahābhārata 13.46 and 5-6 cited by Sternbach (1965: 370) also states the same passage.

social behaviour in the context of marriage. These episodes show how law and duty are fulfilled or transgressed in specific situations and cases. Very often the situations presented illustrate a dilemma created by the clash of two *dharmically* enjoined actions. The stories and episodes in these poems highlight the unfortunate results of difficult dharmic requirements, even at times specifying situations where dharmic authority is manipulated and show the outcome of such manipulations. Some grey areas are covered, and though this cannot in any way be treated as ancient or medieval “case-law”, Jamison (1996: 9) cautions that it is misleading to read this material without recourse to legal and religious duties which the actors in the stories enact or ignore.

We consider here specifically the role expectations of the father to find a suitable husband for his daughter and the possible dangers of not doing so, as illustrated by the epic literary tradition. The texts do not concur exactly on the appropriate marriage age for girls. However, it is enjoined that a father must find a husband for his daughter somewhere during the first three months and three years of her having attained puberty.³⁰⁸ If not, he is held to be guilty of one of the gravest crimes: *bhrū aha ya* or embryo- murder (Jamison, 1996: 237)

Jamison (1996: 9) makes note of how modern readings and interpretations of the epic literature tends to gloss over the interrelatedness of idealised rules of conduct with the idealised narratives where dharmic principles are applied. She highlights the fact that “The epic narratives tend to be stripped of their dharmic skeletons” (1996: 9), flattening the complex character of several women participants in these narratives into the modern cliché of the submissive-wife-type, while their epic dimension is clearly more layered. For instance Kakar (1988: 55-56) recasts a defiant and by no means submissive character in the MBh into this role-type, which rather typifies the investigator’s conception of ideological narrative.³⁰⁹ This sort of modern ideological manipulation is telling of similar role assumptions for women today. And though this use, or misuse, of the narrative literature may be illuminating about underlying patriarchal assumptions and attitudes in the epic period and even modern India, it cannot be easily imposed on the picture of ancient India. This is why one needs to be cautious in viewing modern media versions of

³⁰⁸ Three months is held by GDS XVIII.20; ViSm XXIV.40. The *dharmic* *śāstra* which allow three years after the menarche are: BDS IV.1.12, 14; MDS IX.90 and the *rī ās hadhar śāstram* XVII.67-68. Also for further discussion on this subject and details see Schmidt (1987: 22-23) and Kane (1961: 439-447).

³⁰⁹ See in particular the treatment of Sāvitrī by several modern accounts: Wadley (1988: 32); Carmody (1989: 47).

these epics, which have certainly been re-interpretations of the ancient material in the light of our times rather than verbatim transpositions.

While a detailed examination of the epic material on marriage prestations is beyond the scope of the present thesis, it can be stated firmly that here, too, there are no signs of any reservations about the involvement of ‘dowry’ in marriages among Hindus. The epic layers of text, too, then, underwrite the general principle that giving something in marriage together with one’s daughter is broadly in line with *dharma*.

5.4 The evidence in terms of *dānadharmā* gift theory

As discussed through the analysis of gift in this thesis so far, it is clear that the act of giving creates rather than severs relationships. This is specifically why the form of marriage preferred by the *śāstrīkars* was the one which causally created a host of inter-linked kinship relationships and duties, ideally in terms of the *Brahma* marriage. And, in turn, this explains why the form of marriage which discourages binding relationships by characterising the exchange almost as a quick sale, namely the *Āsura* type, is historically passed over in preference for the *Brahma* form. In fact the *Āsura* form is seen almost to sever relationships. The gift itself is a link between giver and receiver. The gift is of course the girl herself and the additional package in terms of her clothes and her jewellery as well. This notion of gift as the cement which binds, even establishes society has been adequately addressed by Gonda (1975: 175), and suits the present argument well:

To the gift, indeed, a mystic power is attached which establishes community: giver and receiver participate in the gift and therefore, in each other. The man who gives places himself in relation to the man who gives; the accepted gift often binds.

This “exchangist” (Levi-Strauss, 1969; Jamison, 1996: 207) view of marriage is important to any pertinent analysis of the evidence laid out in the above sections. It is clear that gift exchange underpins the binding knot which ties two people together in a marriage and links them in with their families (See Fig. 5 & 6). The idea that in the standard marriage type the girl is “given” to the groom has been vigorously disputed in Goody’s (1990: 167) recent analysis of “oriental, ancient and primitive” marriage systems whilst examining the structural unit of families in the pre-industrial societies of Eurasia.

However, noting the relevance of the characteristics common to most human marriage alliances, as recognising the centrality of gift-giving, I can continue the present argument in light of the Sanskrit texts' evidence. If the testimonial of the texts, as laid out above, is considered carefully then it is impossible to sideline the conclusion that marriage is conceptually a part of the wider gift-exchange system in ancient India. To clarify, Goody's protest seems to rely on a fundamental misunderstanding about the very focal nature of gift-exchange in this society. His view is that giving *severs* rather than *makes* relationships between the giver and receiver (1990: 169; 222). Further, he argues that the gift alienates the gift from the giver. His belief is that since the wife retains her natal ties of kinship, the marriage cannot in theory involve gift at all.

I would argue in favour of previous studies which seem to outline the nature of giving and the complexity of the relationship this giving creates inalienably. Most importantly Gonda's (1975: 175) assertion that the act of giving "binds" in the context of marriage. In order to further understand the nature of giving and its relationship to the exchange and barter of rank for better ancestry, it is worth contextualising the ancient evidence with its shoots in the medieval period, in order to finally draw the branches into contemporary time.

With specific reference to unpacking the gift theory in terms of application to ancient Indian society it is worth summarising Mauss's proposal regarding the significance of gift giving. According to him gift-giving creates an undeniable social link, the vital significance of gift-giving behaviour is that it affirms, expresses, and confers on the participants a unique, and ongoing relationship, which is binding in nature. However, gift-giving behaviour may also be the idiom of competition and rivalry between the participants.³¹⁰ To that extent Goody's arguments, as outlined above, have a point.

In particular, there are many instances where one person humiliates the other by intentionally giving more goods than can be reciprocated. An aspiring status seeker desires to give away more than can be reciprocated and he gets in return: prestige. Mauss and Levi-Strauss underline the nature of gift-giving as social discourse; the means by which early societies were cemented together in a circle of social cohesion, in the absence of specialised state organisation. This ties in with the wider Vedic worldview, of

³¹⁰ For instance, as seen in some political systems in highland New Guinea, like the Big Man systems exchanges are based on the unequal exchange on the material plane (Mauss, 1966).

underpinning *dharma* through adherence to the *sadācāra* of giving dowry. Further, it is worthy of note that universally in early societies there is a recognition that “the gift is the primitive way of achieving peace that in civil society is secured by state...Composing society, the gift was the liberation of culture” (Sahlins, 1972: 169; 175).

Levi-Strauss’s (1969: 50-51) addition to the theory of primitive reciprocity is crucial to note here; in his view marriages are the most fundamental form of gift-giving, wherein it is women who are the most precious of gifts. He adds that the incest taboo (as seen in India in the prohibitive degrees)³¹¹ imposes the social aim of exogamy and alliance on the biological act of procreation. Specifically by forbidding alliances and unions within a given group it enjoins marital exchange within groups. The prohibition of incest is less a rule prohibiting marriage with the mother, sister or daughter, than a rule obliging the mother, the sister, the daughter to be given to others. “It is the supreme rule of the gift...” (Levi-Strauss, 1969: 481).

The result of a gift of women is more profound than the result of other gift transactions because the relationship affected is not just one characterised by a kind of reciprocity, but importantly one of kinship. The participants become affines; their descendents will as a result of the original gift be related by blood. At the same time, marriages may be intensely competitive, as characterised by modern dowry marriages that may go wrong (Wyatt, 2009).³¹² There are many references to affines fighting each other. Nonetheless, the argument is that the taboo of incest creates a wider network of inter-linkages through marriage, a set of people who are connected in a kinship structure, a web of interdependence causally linked by the gift-giving behaviour, “all other levels, amounts, and directions of exchange—including hostile ones—are ordered by this structure” (Rubin, 1975: 174). Most ethnographic records typify marriage ceremonies as mere moments in an endless and organised procession in which women, children, shells, words, cattle names, nuts, yams, spells, dances and mats are passed hand to hand, cementing thereby the binding ties of kin. And, most crucially, Levi-Strauss (1969: 115) classifies the nature of this transaction lucidly:

³¹¹ Details of prohibited degrees are highlighted throughout the literature, and see Kane, HOD II.1 (1961: 436-438) for further discussion on this topic. For reasons of brevity this discussion limits itself to the relevance of exogamy to the notion of idealised marriage alliances.

³¹² See for instance Best (cited by Levi-Strauss, 1969: 480-1) “Two people may meet in friendship and exchange gifts and yet quarrel and fight in later times, but intermarriage connects them in a permanent manner”. This correlates to the discussion below in section 6.3 examining recent case-law where warring families face a dichotomous dilemma because of the gift-giving relationship created through the act of a dowry marriage, connecting them even when they no longer want to remain connected.

The total relationship of exchange which constitutes a marriage is not established between a man and a woman, but between two groups of men, and the woman figures only as one of the objects in the exchange, not as one of the partners.

Rubin (1975: 174) also describes this transaction in the links they create between the groups of men and the significance this therefore carries for an entire social grouping. In her view:

If it is women who are being transacted, then it is the men who give and take them who are linked, the women being the conduit of a relationship rather than a partner to it...If women are the gifts, then it is men who are the exchange partners. And it is the partners, not the presents, upon whom the reciprocal exchange confers its quasi-magical power of social linkage.

Quite clearly from the sound research conducted by giants like Marcel Mauss and Louis Dumont in the anthropological and sociological fields of marriage exchange and behaviour patterns, a significant trend was noted. In fact the very term hypergamy, by which superior lineage is sought through marriage, was coined in order to accommodate this peculiar upwardly conscious move made through a marriage alliance. Both Dumont and Mauss note the peculiarity of Hindu families that are anxious to maintain and project a clear line of gift giving, which in turn supports an ongoing relationship between generations. All this behaviour seems implied in marriage negotiations during and before the act of marriage itself. And although so far in historical research not many links have been found between specific marriage customs linked to and concerned with dowry, and the ancient and medieval texts which seem to prescribe and proscribe these behaviours, I am now confident that throughout the textual material there is constant reference to and confirmation of one type of marriage as being the ideal form, the *Brahma* marriage. It seems to be a one-directional form of gift-giving, but in effect it creates an ongoing relationship between two families, in which forms of gift-giving are bound to be an integral part. That there may be certain imbalances between the two flows of gifts is a different matter, and it will be necessary to consider that today's wife-giving family is tomorrow's wife-receiving one. A too simplistically drawn juxtaposition of the two types of giving entities is highly questionable.

It is worth pausing here to briefly reflect again on possible intent of the *sastikars* in composing the classical list in ancient literature of the eight forms of marriage.³¹³ It

³¹³ See e.g. Kane, *History of the Dharmaśāstra*, II, I: 516.

seems initially perplexing until the intention is interpreted in terms of idealisation; that it essentially contrasts marriage as gift to marriage as purchase: the *Brahma* versus the *Āsura* form, clearly showing preference for one over the other. Dumont (1966: 116) believes what is primarily at issue is a “theory of the prestations among the orthodox and the others.” In the *Brahmanical* theory of marriage the union is conceptualised as a gift in terms similar to those in other ancient and pre-literate societies (Rubin, 1975), and the prestations, presents or gifts, must accompany exclusively the wife. That is to say, they must go from the wife’s family to the husband’s. As we shall see, this theory has to a large extent become fact.

By contrast with this conception, the *Brahmans* concocted a notion of marriage by purchase. According to Dumont (1966: 116-119), such marriage may never have existed anywhere, but the notion serves to express the fact, found among less elevated castes, of bilateral instead of unilateral prestations. The *Brahmanic* authors of the *śāstras* are here portrayed as similar to modern anthropologists who albeit without justification in India, often speak of ‘bride price’ or ‘bridegroom price’ when they see that prestations in one direction predominate. Dumont seems to ignore the possibility of an ongoing dialectic between the Aryan new-comers, during the early period of composition of the Sanskrit texts, and the indigenous population,³¹⁴ and their competing, indeed opposing, forms of marriage. Patrick Glenn (2004: 289-290) more recently highlights this when he refers to the reasons for the enumeration of the local customs and habits of the Aryan newcomers. It is highly possible that the demonised *Āsura* might indeed have been the form of marriage customary to the non-Aryans from whom the Aryans desired to take wives. There is evidence of a kind of controlled exogamy, as we have discussed already, where the Aryan community is not allowed to marry within certain degrees of relationship. Though marriage alliances are ideally meant to arise from the same caste group, there are prohibitions against belonging to identical subgroups within that caste. The result of these is to enjoin and therefore require a controlled exogamy of sorts.³¹⁵

As discussed earlier, Gonda (1990) in his trawl through the ritual *sūtras* found several supporting statements which signify that gold was integral to the *Brahma* form of marriage. This is clearly followed through also in *ṛgveda* . 85, the marriage verses; and

³¹⁴ The Aryan invasion theory remains heavily contested in many circles today, academic and otherwise, and though intriguing is a topic this thesis cannot digress into.

³¹⁵ For an interesting correlation of the continued effect of these prohibitions a glance at the modern matrimonial columns of the national dailies in India is informative.

in other lesser *gryhasū ras* linked to the ṛgveda. In addition, we have the complex and unique gift-giving behaviour minutely researched and reference by both Dumont, in support of his caste study and its dynamics, and also by Mauss in terms of the singularly significant sanctions and norms that go with gifts. It is evident from even the most cursory reading of this material that there is no such thing as a free gift (Douglas, 1990). This view emphasizes, as noted, that even charity is not without repercussions and forms a relationship between the donor and receivers.

In most contemporary studies of Hindu marriages the emphasis has been on the perception of the *Brahma* or *kanyadān* form of marriage as the form which is or should be free from any gift, other than that of the “pure gift of the girl”. This is in itself fallacious, as the girl embodies a significant gift in herself, and as we have seen she is always “brilliantly attired” or “ornamented” or “bedecked” to the suitability of her father and family’s abilities, which constitutes wealth (Fruzetti, 1990). During marriage there is a range of relationships being underpinned and created by the very act of the ritual tying of the knot between the groom and the bride. A range of gifts are made, there are gifts exchanged and given by the father to the groom in acts of worship which are significant in terms of the show of superior rank of the groom vis-à-vis the father of the bride. Further, the research of several scholars shows evidence of gift-giving enjoining certain codes of conduct by both givers and receivers during and in the period that follows the marriage. Therefore, when a gift exchanges hands there is merit associated and a clear blueprint laid out by the domestic ritual manuals, whereby certain behaviour is desired and better. And that again contributes to and constitutes *sadācāra*.

Seen in this light, even the list of acceptable marriages is itself a form of textualised *sadācāra* which is enjoining the preference of marriage by gift rather than marriage by purchase. Dumont highlights the ideology at play when he mentions how the *Brahmanical* authors are giving voice to their own preferences, to ensure that that practice will then become a wider spread custom. We thus have extensive evidence from the entire Indian sub-continent is replete demonstrating that the preferred model is the dowry marriage. I will lay out below (See chapter 6, below) some more evidence that dowry marriage as we see it today is clearly a reflection, if not a mutation, of the most ritually meritorious marriage or the *Brahma* marriage.

According to the medieval interpretation of the *śās ras*, the *Āsra* form of marriage was an act of dharma or worship, where the father of the bride “should accept

wealth (*pana*) in the house of the groom (*vara*) and in exchange for that wealth he should make a gift of his daughter to that groom”.³¹⁶ The *Brahma* form of marriage is conceptualised as the precise opposite of this terms of wealth giving, as we have discussed. According to Inden’s (1976: 98-99) research this form of marriage enjoins that the father of the bride should bring a groom endowed with “good clan and good conduct (*kula-sila*) to his own house and he should adorn his daughter with valuable clothes and ornaments” [emphasis added].³¹⁷ Then, the bride’s father should pronounce their personal names and *gotras* and give her to him. The gift of wealth to the groom which was supposed to follow his acceptance was called a *dakṣ na*, the same term applied to the honorarium given to the *Brahman* priest after he performed an act of worship for someone, the gift of which transferred the benefits from the priest to the worshiper. Seen as acts of worship by Inden (1976: 99); both these “acts of worship”, make inequality an issue of rank between the father of the bride and the groom to be. In the *Ās ra* form the father of the bride is respectfully and “worshipfully” invited to the groom’s house, where he offers a gift of wealth in exchange for the more valuable gift of a daughter. Clearly in terms of rank, the father of the girl is superior to the groom in this marriage transaction. In the *Brahma* form, the father of the bride invites the groom-to-be to his own house, where with a gift of wealth and through an act of worship, he respectfully, even humbly asks him to accept not only his daughter but also the accompanying gift of wealth.

It has been noted that this is “a strange exchange” (Inden, 1976: 99) because although the groom is accorded a higher rank in this transaction he *appears* to give nothing in return. However, this is not the case, because by a peculiar set of cosmic transformations and transmutations during the act of worship performed during the marriage ceremony, and the acceptance of wealth, the daughter having been incorporated into the family of the groom, in her rightful position of wife, the giver of the daughter gains certain intangible and highly prized benefits. By subordinating his own natal family’s desire for the gain of wealth at marriage, and by therefore shunning the unpopular *Ās ra* form of marriage, the father of the bride pays heed to the well-being of the groom and his family by in effect “feeding” them a healthy, ornamented daughter and by overtly accepting nothing in exchange, or in return, the father of the bride gains the

³¹⁶ *Nibandha*, Dacca University Library MSS (uncatalogued), n.d. (as cited by Inden, 1976: 99).

³¹⁷ For a clear conceptual mirroring of the importance of *vastra* or *bastra*, clothes especially adorned and of special nature befitting the social status and manner of the father’s position in Hindu society in modern day Bengal, see Fruzetti (1990: 57-59).

invaluable benefit of “immunity from the effects of improper acts for twenty-nine generations”³¹⁸. This is a gift of far greater value than the one he has just parted with: that of wealth.³¹⁹

A list of gifts exists, which enjoins a number of recipients, who may also be considered deities to be worshipped through the act of giving: important relatives on either side of the marriage parties (*namaskari*), the guests got given departure gifts (*bidaya*) by both fathers, the gods and their priests at each house were given (*pranami*), the priests further got an honorarium (*dakṣ na*) and finally attending members of the wider community who were dependent on the houses of each family and played a role at the ceremony, e.g. the servants and the barbers, were gifted with community gifts (*samajikata*).

Although there is almost an symmetrical giving of both families at the occasion of the marriage in these terms to other kin, and clan members, including servants, this is in sharp contrast to the giving during the hypogamous *Āsra* exchange, and the hypergamous *Brahma* transaction. The clear need to gift and dispense wealth in order to gain status, whether temporary or imaginary, also in terms of cosmic benefits to accrue to ancestors and future generations, shows a preoccupation of Hindu society to perpetuate gift giving patterns of behaviour during marriages to propel their own favoured way of life and thus to fall in line with *sadācāra*. The research by Inden (1976) does not suggest that modern legal proscriptions of gift-giving have been effective ‘on the ground’, people in Bengal use gifts related to marriage to achieve a variety of purposes.

Another term often associated with the giving and taking of dowry is *kula-maryada* which refers significantly to the notion of “the prestige of the clan”. Here we can see directly the symbolisation of a custom into a norm that carries within it the marker of status. This in itself as a practice has been clearly recognised by anthropologists (Inden, 1976: 105; Fruzzetti, 1999: 43) as a pointer to the purpose behind the giving of wealth at marriage. In modern terms the equivalent of the Sanskrit word *pana* as *paona* in its colloquial Bangla is not dissimilar to the original. Interestingly when referring to dowry gifting in colloquial terms the word *dena* is additionally used as

³¹⁸ Nibandha, Dacca University Library MSS (uncatalogued), n.d., fol. 7 (as cited by Inden, 1976: 100)

³¹⁹ It is important to note that from Inden’s fieldwork his informants classify rank very differently and stress that these gifts were not perceived in and of themselves to transmute rank to the worshipper in terms of worldly prestige, or fame and respect. Neither was the other gifts given during and after marriage seen to transmute rank.

well,³²⁰ which simply means giving. Very crucially the terminology is here linked directly to the status of the gift or *pana* (or *paona*) that this gift was not like the *dakṣ na* given at marriage either in the *Brahma* or *Ās r a* form. Though similar to it in terms of wealth given to the father of the bride in the latter, and the groom in the former the *pana* quite clearly represents something different. Its main purpose was neither to accrue intangible merit after death as in the *Brahma* nor to gain the benefit of a bride as in the *Ās r a*, the *pana* was intended very clearly to transmute one's embodied inherited rank into the superior fruits of fame, glory and prestige, or *kula-maryada* in the here and now. It is a secular concern, therefore, linked to status and rank. Inden (1976: 108-120) clearly demonstrates how the Kulina marriages of Bengal were unique in the status symmetry and how it was dictated by the flow of gifts on the occasion of marriage, where the family of a higher clan gave less and there was a clear enjoinder on the inferior ranked family to give more. Such patterns may or may not be followed in other parts of India.

Inden's (1976) research plays an important part in providing the link to modern research by Fruzzetti (1990), who finds parallels to similar behaviour patterns at marriages still in performance in contemporary Bengali society in the late 1970s and early 1980s. From the above discussion it emerges that dowry as a custom, and not only in Bengal, is not seen as 'bad'; but that the practice related to it may be problematic.

According to Madan (1975: 231), "[o]nce the negotiations for a marriage have been successfully completed, it normally is in the home of the chosen wife-givers that the decision to establish a union is formally and publicly taken by the two parties". He then goes on to describe what happens next:

The brief proceedings follow a set pattern: The spokesman of the wife-takers...humbly requests his counterpart from the other side to promise that the girl will be given in marriage to them. The request is accepted but a great deal of verbal finery is employed to stress that the customary marriage gifts will be modest. Thus: 'We are a poor household. We have but a vessel of pure water. If that is what you want, you may have it. Expect no more.

An exchange of flowers and some small gifts, such as fruit, follows. Invariably, the wife-givers add money in cash to the symbolic gifts. The most striking feature of the ceremony is that the wife-takers appear in the role of supplicants and, when the gifts are exchanged,

³²⁰ *Dena Paona*, Tagore's (1861-1941) play bemoaning the plight of the father of the bride, was a strong social messenger in its time and has been recurrently staged to propel the cause of the anti-dowry movement. As recently as 2003, where a staging of the play was presented in conjunction with the 6th International Conference on Dowry and Bride burning in Delhi, these attempts at demonstrating the evils of the dowry system continue.

their spokesman spreads the hem of his gown wide, bows and stretches his arms, all in the manner of a recipient, to accept the gifts. As we saw above, the notion of *jholi-pasarna* or to spread out the begging bag, as the lowly recipient, in section 4.2 above. This is the beginning: ever afterwards the gifts flow unidirectionally from wife-givers to wife-takers. When the marriage takes place, the girl is bedecked with fine clothes and ornaments, and given as a gift to her husband. The *kanyadān* (gift of the virgin) is one of the central rites in the marriage ritual. Contrary to what is said at the promise-giving ceremony, many gifts of various kinds, accompany the bride to her conjugal household.

Most notably for the purpose of the status play at work in this system of dowry gifting is Madan's (1975: 231) observation of the deferent behaviour of the wife, and by implication of the gift-givers:

“Those who give gifts also give deference to those who receive them. Unlike other receivers of gifts who become demeaned by the act (this is true of, for instance, Pandit priests vis-à-vis their patrons), wife-takers assume the higher status in relation to wife - givers after the promise-giving ceremony.”

What seems evident here is the hypergamous behaviour at play, where the inherent inferiority of the bride's family and kin in comparison with the bride-groom's is now very much at play in society. These behavioural subtleties and the more obvious scorn by one set of kin for the other, as displayed in marriage ceremonial rituals underlie the deeper rooted gift exchange pattern that has been in place in Indian society for a long time now. The insistence, often of the father of the bride, that it is his duty to 'bedeck her suitably' to meet ably with the expectations and demands of the boy's side are all clues to the inter-play and competition between wife-takers and wife-givers in terms of superiority and maintaining suitable power relations, but also reflect the basic pattern shown in this chapter as coming from the ancient texts.

Mindsets are minutely influenced by these behaviours, and as much as people pay lip-service to the anti-dowry campaign enacted and today even championed by the state government, personal behaviour has not significantly changed. Gifts must exchange hands when a bride is taken and given at a marriage ceremony. The harmony of power tilting one way or the other must be maintained. Fascinatingly all this is supported by clear recommendations within the textual material; not as previously thought by being absent, but being very much present. This contrasts of course with criticism, such as expressed by White (1987: 554):

“...Perhaps the most oppressive practice of gift giving in Hinduism, likewise representative of an aspect of caste or subcaste behavior, (sic.) is the system of exchanges between a bride’s family and a groom’s family, sometimes observed for a number of years both before and after the marriage proper. The prevailing custom places the burden upon the bride’s family, and the demands are so excessive that responsible parents in the poorer classes are frequently forced into penury to provide a daughter with a husband. It is not unheard of for a father to commit suicide so that his insurance money can be used to pay off the resulting indebtedness.”

The exchange of gifts represents one of the most illuminating characteristics of human culture, and has been seen by some scholars as the original basis for economics. Gift-giving has been identified to have two aspects linked with it in most societies, which makes it more amenable for analysis. The first is the religious aspect ruling customs and sanctions; the second is the sacrificial aspect. From the particularly religious perspective it is crucial to observe how gift-giving is incorporated into the practised set of religious customs and sanctions that may regulate social behaviour, and in the case of dowry, the behaviour associated with marriage and its negotiations. The second, sacrificial aspect involves offering the gift to a deity or deities. This ritual presentation may take the form of re-distribution of the gift items within the selected social group; or more sinisterly it may entail the destruction of the gift. This destruction has been recorded by social scientists in many forms, and in various social groups across the globe. The peculiar nature of this destruction takes on the function of destroying all or part of the thing given, which ritually symbolises its disappearance into the metaphysical realm and thereby its acceptance.³²¹ In terms of the sacrificial aspect we have no room in this particular study to examine the ominous face of dowry where the girl, who is the primary “gift” is being ritually sacrificed. This aspect of dowry gift destruction needs to be analysed carefully with reference to the mind-set and the justification process at play with those individuals who turn into alleged or actual dowry murderers (see Wyatt, 2008).

There has been no evidence of the wealth given with dowry being destroyed when the girl is killed. Fire is a potent symbol of ritual sacrifice in ancient Vedic times (Henninger, 1988: 555), in modern India as well as in a number of other world societies.³²² And it remains so. Therefore, I suggest fire is used as a tool of ‘sacrifice’ because it is seen to essentially purify. The numerous references to ritual purification of

³²¹ For more detail see Van Baal, and also for a discussion of sacrifice at joyous occasions (1976: 168-178).

³²² See in particular, Henniger’s discussion on Hindu-Vedic sacrifice in general and in particular the relevance of sacrifice at the time of extraordinary occasions and extraordinary time and place, e.g.: marriage (1988: 548).

women through the use of fire become the reference point for women at ground level, typically the apparently non-fictional exemplars of Sita and Savitri as famous women who upheld *dharma* at personal cost to themselves (Jamison, 1996).

With specific reference to how the pot-latch theory of gifting ties in with the notions of dowry gifting, White (1987: 552) discusses that the purpose of the potlatch among the Kwakiutl was “not to accumulate goods but to show one’s ranked status in the community by the level of munificence one displayed”. Most scholars writing on the relevance of this gift system have compared the gift giving involved at the potlatch to a kind of warfare or war game, during which the bestowal of particularly extravagant gifts could inflict “wounds” on other participants. Although the similarities of the pot-latch system with practices in India in Hindu communities has not been commented on by leading writers, an analysis of the potlatch system reveals more than a few traits in common with the Hindu caste system.

The Hindu system of caste assigns rank also at times of feasting, in communal settings. This festivity, usually seen at times of births and marriages for instance, includes a very large element of redistribution of economic resources. Indeed, those who ranked highest on the curve of potlatch status owned not only goods in quantity but sacred names that could be distributed only during the communal feast. Moreover, those of highest ranking regarded themselves as an exclusive group. Notably they had only limited contact with those lower in the system, very much in conjunction with the behaviour of caste groups in the Indian, Hindu context. Indeed, the bestowal of magical and sacred names is an almost universal phenomenon throughout the Hindu religious system. Of course this does not imply that the pot-latch gift-giving system is the same as the caste system. But if Mauss’s (1925) original insight is to be believed, then the socially sanctioned distribution of gifts and other tokens of relationship, fraught with historical and structural significance as these things are, may be an irreducible element in human culture. The pot-latch and caste system are perhaps instances of general principle, which underlie behaviour sanctioned and governed by these fluid rules. The universal relevance of these systems is clearly defined and established.

I would argue that the dowry system could be seen as an example of the pot-latch system of gift-giving. Further from White’s (1987: 552-553) summation, it is possible to connect this system of archaic societies and their sanctions and taboos relating to gift exchange, and the pressures of keeping to tradition, to the similar pressures of dowry

gifting incumbent on marriage negotiators. In fact I would argue that dowry may be clearly identified with what Mauss (1990: 36-37) has referred to as a “total” cultural phenomenon.

The gift or acceptance of a daughter was clearly conceived of as an act of worship, creating relations between persons belonging to different clans. Marriage may even be seen as the ultimate transformative act. It transformed the daughter into a wife, changing her bodily substance,³²³ and code of conduct into those of her husband and his clan. Further, for the primary purpose of Vedic marriage as *praja* or procreation, of rendering her reproductive substances thereby into the “field” wherein the husband planted his “seed” for the means of procreation and upkeep of the clan name.

Environment and time both effect change in the concept of law, specifically here of marriage. Even within one plural tradition, like Hinduism, there emerge apparently divergent and contradictory attitudes to customs at various levels of society for which there might be little or no explanation. Why some types of marriage fell out of favour and others flourished has not always been clear. Customs, like dowry which function within the wider framework of marriage, have similarly seen historical shifts in attitude. In ancient India, there seems to have been an array of marriage forms in existence. However, from all the corresponding literature of that period we find one form of marriage being enjoined as the best and the ideal one. And that ideal form of marriage involved not just the transfer of a bride but clearly also had economic connotations and consequences.

Having thus examined the evidence from the various layers of text in their repetitious enjoinder of one preferred behaviour over a long time, we can make the assumption that dowry in its textual form is not so different from the way in which it is practised today. It could be argued that the *śāstrīkars* knew to cover their tracks and did not speak about ‘dowry problems’. As a researcher it is my task to uncover these tracks to discover the clear trail of behaviour as we see it in practice and therefore now see it in existence, in no uncertain form, in the layers of these traditional texts as well. We can now proceed to the task of tying in this evidence with the crucial state of the dowry question in contemporary times, particularly in the body of the statute itself. The next

³²³ In Fruzzetti’s (1999: 43) experience “The bride retains her own father’s blood; otherwise she would not be able to carry her husband’s line”. This discussion of *gotra* and how women acquire new relatives not through the bloodline is taken up below in section 6.2.

chapter will show how even the modern statutory text that claims to be against pernicious dowry customs does not quite and fully disallow all forms of dowry.

Chapter 6: Anti-dowry law: A misguided strategy?

This chapter specifically examines key issues related to the current condition of legal reform with regard to and surrounding the contemporary dowry debate. However, as the thrust of this thesis so far has been the ancient material and its relevance to the custom of dowry and its conceptualisation, it is important to root the discussion in the past five chapters through the present and necessarily brief analysis. From the ancient and medieval texts and their interpretations and social reflections, we now move the lens to the modern text of the statute. Additionally the intent is to outline a clear conceptual model based on the examination of evidence thus far to delineate the continuing function of dowry as a custom in order to properly comprehend its prevalence, if not persistence. It is important before this is formulated to turn to the process of modern law making that has been seen as “toothless” (Thakur, 1998: xiii).³²⁴

Indian legal theorists warned that legislation curbing a custom would not work.³²⁵

I do not see an end to the dowry-system. As long as the joint-family system survives as a sociological fact (irrespective of what happens to it at law) the purpose, not less than the possibility, of these gigantic dowries will survive.

(Derrett, 1984: 192-3)

Derrett’s observation reads like a prophecy and is an important point of reference to begin the present discussion. The anti-dowry law has failed, it is claimed by many observers. But was it intended as an enforceable law? Were the law makers aware that they were fashioning in the body of the statute, or DPA, merely a deterrent?

With specific reference to women and their recourse to law we must consider the accessibility of law at ground level to those who need it. Particularly when women find themselves in an awkward position, where neither their natal families nor the family they have married into are entirely clear about who owes an allegiance to her and her welfare. We examine this aspect of law and its accessibility more in section 6.3 below, with

³²⁴ The term “toothless” has come to be linked inextricably to the way the DPA is seen in both academic and legal terms. Sister Mary Alphons, Principal Nirmala Niketa College for Women 1990-2006, also classified the DPA as “toothless” to highlight its inapplicability and therefore the frustration of social workers, activists and lawyers at ground level. This is an important aspect of *sadācāra*.

³²⁵ For a discussion on the role of reformers like Nehru and Ambedkar, both instrumental in the introduction of the Hindu Code Bill of the 1950s, see Gupta, (2001: 30-36). Gupta’s discussion is also worthwhile for a further analysis of the impact of public opinion on law making with specific reference to dowry.

reference to what the case law shows. Here we first undertake an analysis of the available anthropological literature with a firm focus on the expectations related to dowry. My intent has not been to conduct a field study of my own, as this thesis set the task to discover the conceptual foundation for dowry. The intent is to prepare literary ground for a future research project to conduct field analysis to develop the concepts that will come to light through this thesis. The research here, as was already shown, also builds on past secondary sources of anthropological monographs (Inden, 1976; Fruzzetti, 1990) dealing with marriage customs in India in order to examine the nature of dowry as a custom.³²⁶

Derrett's (1984) assertion highlights the extent to which the dowry system is ingrained within the Indian social context, a point recognised by many academics.³²⁷ The thesis emphasises the fact that we may be looking through the wrong end of the lens. Modern case-law and relevant judgements are examined here to enable an insight into the contemporary concepts of right and wrong in the light of the ancient evidence. Further, the current social context presented here through recourse to the text of the statute law itself may enable us to understand the prevalent mindset that allows the acting out of dowry as a crime in contravention of the law, yet with social sanction, and more or less silent and certainly quite conspiracy-centred approval. Is dowry (or even dowry murder) conceptualised as a crime at all? And if so, why is it unable to be curbed effectively by the judiciary? Such questions of course raise huge issues over the powers of judges as social engineers, and we shall see that judges may be aware of that role, but also face serious limits.

6.1 Examination of the modern anti-dowry statute law

The Dowry Prohibition Act of 1961, as noted in the introduction, was a combined effort of the state and the early women's movement in India to combat the rising trend in "bride-burning" as it was then called. The nature of this legislation lends itself to the exposition of this thesis perfectly. It declares at the outset its intent as a well-intentioned "an educative measure" (Menski, 1997: 71) in its outreach, attempting to inform and

³²⁶ In this thesis the work of Fruzzetti (1999) is relied on for a modern conception of dowry arrangements within marriage in modern day Bengal, as a yardstick. Further the work of activists (Bhattacharya, 1984; Shukla, 1985) carrying out research in the state of Maharashtra with a view to examining the shift from bride-price to dowry model marriages, will be relied on here to construct a picture of modern conceptions of dowry as *sadācāra*.

³²⁷ The dowry debate is over a century old in terms of social discourse (see Banerjee, 1879; Baxi, 1986; Karve, 1953; Hooja, 1969; Kishwar, 1986; Menski, 1997; 1998; Sen, 2001; Oldenburg, 2002).

thereby transform social behaviour rather than simply rule make. In fact, the aims of the DPA 1961 are clarified in its preamble: “...educating public opinion and to the eradication of this evil”. Interestingly this reflects the Hindu legal conscience at work; not making law but coercing it. This law was held to apply to “the whole of India except the State of Jammu and Kashmir” (Bhatnagar, 1996: 65). However, because there was a lack of implementation in terms of criminal convictions, within a few years of this Act being instituted it was by common consent declared a dead letter of the law (Menski, 1998: 109).³²⁸ Being thus regarded as a “toothless paper tiger” has reputedly underlined the ineffectiveness of a law informing social behaviour.

An examination of the original purpose and “object” of the Act, stated at the outset demonstrates that the legislators conceived of dowry more as a social problem, thereby they saw their role more as educators than legislators. It is stated:

The object of this Bill is to prohibit the evil practice of giving and taking of dowry. This question has been engaging the attention of the Government for some time past, and one of the methods by which this problem, which is essentially a social one, was sought to be tackled was by the conferment of improved property rights on women by the Hindu Succession Act, 1956. It is however, felt that a law which makes the punishable and at the same time ensures that any dowry, if given, does ensure for the wife will go a long way to educating public opinion and to the eradication of this evil. [emphasis added]

This statement goes on to interestingly begin making room for the practice that it insists on demonising as “evil”, by recognising that some form of exchange, specifically gifts in the form of “clothes etc.” may be seen as harmless. This recognition and an allowance for the very things that the ancient texts, as we saw in the previous chapters, specify shows a clear link in the thinking of the insiders in this society. As the “Object” states, there was a call for a law of this kind “persistently”, both from within and outside Parliament. This further demonstrates that the actions of those considered upright in society is being considered in the shaping of law at the most fundamental level. This conscription is clearly *sadācāra* at work. The statement is worth repeating:

There has also been a persistent demand for such a law both in and out of Parliament. Hence the present Bill. It, however, takes care to exclude presents in the form of clothes, ornaments, etc. which are customary at marriages, provided

³²⁸ The first reported case under the DPA was interestingly a Christian case in Kerala, *Thomas* 1975 KLT 386.

thereof does not exceed Rs. 2.000/-. Such a provision appears to be necessary to make the law workable. [emphasis added]

The allowance for “customary” practice is interesting here, particularly since the items allowed are in keeping with traditional ancient and medieval textual prescriptions and expectations. The quantitative ruling, in terms of monetary value of the “allowable” dowry has created another dimension of the ‘dowry problem’, which is not possible to examine here at length. However, it does need to be mentioned. When a certain amount is given as “officially” acceptable, it invites all sorts of status play, class and caste attitudes spring into action whereby a washer-man might judge himself superior to his employer because he can out-do him by giving several times the “official” amount. There are such cases recorded in British administration census reports, when dowry began to be seen as an exorbitant practice for the first time (Panigrahi, 1972: 176).

In the opinion of most “the law does not appear to have enough effect on the minds of those who turn into murderers” (Menski, 1997: 67). It appears additionally that the judiciary is split in its approach, on the one hand condemning the phenomenon of dowry murder but refusing to mete out the harshest possible sentences to perpetrators of these crimes. In particular, as we shall see, the courts are shying away from death penalties, which raises of course yet another huge debate of much relevance to Indian law which goes beyond the ambit of the present chapter. As Menski (1997: 73) points out the pioneering approach of the Rajasthan High Court was cut short by the Supreme Court when the former wanted to set a clear public example by publicly executing dowry murderers. Interestingly the violation of the prisoners’ human rights was stressed and finally upheld as grounds to stay the execution.³²⁹ This attitude suggests that the human rights of the killers may be perceived, in a weird logic, as more important than those of the victims because they are already dead?

Finally, before we proceed to unravel the bundle of modern case law to add to our already highly piled academic plate, it is important to note the contention that legislation which does not have popular support is doomed.³³⁰ As Jamila Verghese argued (1980: 10) it is necessary for a change in attitude to work alongside relevant legislation. Nehru believed that it is impossible for legislation to solve deep-rooted social problems without

³²⁹ See *Attorney General* AIR 1986 SC 467.

³³⁰ For a detailed analysis of the negotiation between law and public opinion in comparative terms in India and the USA see Gupta, 2001.

the rallying support of the people. He admitted the limited role of law in fostering social change during the joint sitting of both the Houses of Parliament on the DPA in May 1961, when he declared: “Legislation cannot by itself normally solve deep-rooted social problems. One has to approach them in other ways too, but legislation is necessary and essential, so that it may give that push and have the educative factor as well as the legal sanctions behind which help public opinion to be given a particular shape.” (Bhatnagar, 1996: 3). This view has been reiterated by the higher courts in the country on several occasions, as one Supreme Court judgement summarises:

The greed for dowry, and indeed the dowry system as an institution call for the strictest condemnation. It is evident that legislative measures such as the Dowry Prohibition Act have not met with the success for which they were designed. Perhaps, legislation in itself cannot succeed in stamping out such an evil, and the solution must be ultimately found in the conscience and will of the social community and its active expression through legal and constitutional methods.³³¹
[emphasis added]

In chapter two we mentioned the relevance of codification to the process of lawmaking in India. It was initially a necessary part of gathering all the various threads of discourse together under the aegis of one path, or school or even clan into one set of guidelines. In the ancient context this took on the role of orthodoxy, as we evidenced in the usage assigned to the treatises of the MDS or ‘Manu’ as it is so affectionately but entirely misleadingly called. In the context of modern India the role of codification is relevant to modern lawmaking.³³² This tends to be referred to when introducing a statute, or legal text. It is notable that the words rarely differ; one of the more recent is worth mention here to set the tone for an understanding of how people at large view text, particularly legal text:

Hindu Law has to a considerable extent been codified but the significance of Hindu Law has in no way been undermined by such codification. Though through the process of Codification the Parliament has given due recognition to the basic principles of Hindu Law as is apparent, from the provision of the Savings clause

³³¹ *Shri Bhagwan Singh* 1983 2SCWR.

³³² One version of the Dowry Prohibition (Aiyer, 1998) text begins with the revered *Gayatri Mantra* on the fly leaf; this shows a continuum with a need to connect to the past when setting down a text, or a set of guidelines, even law in India. The *Gayatri Mantra* in a modern context particularly in popular terms is considered to dispel the eye of evil and is meant to encourage good beginnings.

in the many enactments, several statutory alterations have been made in old Hindu Law as required by the changed social concepts and ideas over the years. (Bhagwati, 2007: v)

The importance of a former Chief Justice making note of old and new or modern Hindu law is hard to ignore. Particularly, how both the H and the L are capitalised in Indian usage of the term denoting “Hindu Law” as distinct from law, as a more generic term. This preoccupation with prefacing Hindu law as an entity that somehow remains fluid, and even uncodifiable is crucial to our discussion because it highlights the mindset that bears on the operating of and the purview of this law. Perhaps there is also an element of the otherworldly in implying that Hindu law after all remains at its roots a “received” guidance. A quote that exemplifies the broad scope of Hindu law states: “On one hand it regulates matrimonial ties, which are brought into existence by choice while on the other hand it operates on blood relationships which are brought into existence by nature” (Bharihoke, 2008: vii). This opening seems to echo the old *śāstrīkars’* efforts to continually link the old texts to the past, or to the universe in terms of allegiance and justification. Note, also for instance the following summary introducing the above text (Bharihoke, 2008: ii), essentially contextualising the place of law in the life of Hindus:

Origin of Hindu law can be traced from the ancient sources of law. Equal significance is attached to the schools of law as Hindus follow one of these Schools. Hindu law exists in both codified and uncoded form. Presence of uncoded law is felt more in law relating to Joint Hindu Family, coparcenary, separate and coparcenary property, rights and powers of Karta etc. Codified law marks its presence more in law governing matrimonial relations, law of adoption and maintenance etc. For the applicability of any enactment which codifies Hindu law, the essential requirement is that both parties have to be Hindus. [sic.]

The discussion in this section represents the topical peg for the broader concerns of this thesis. It contextualises the historical analysis of dowry as a custom, using substantial activist and legal source material, both primary and secondary. Papers commissioned (Bhattacharya, 1984; Shukla, 1985) especially to help understand the varying views of women to dowry-related problems are used alongside relevant recent case-law to seek an understanding of what is going on in terms of the popular mindset or *sadācāra* today. What do people really think, no matter what they say? And what do they actually do? And, can one assess that on the basis of some scattered papers and interviews held for the

purpose of criminal conviction? As in the case of the ancient material it is impossible to be sure. No information is considered empirical any more. In this age of twitter and facebook, where people attest to their views in person, albeit through the screen of words on computer screens, we have a new layer of text, another conglomerate of newer traditions. This is what we are going to assess in terms of what this thesis sets *sadācāra* out to be, the belief system of a peer group of ‘good’ people.

The dowry-related conviction that caught India’s imagination in 2003 remains relevant here for our discussion on *sadācāra*. Munish Dalal,³³³ a greedy husband-to-be was imprisoned for making exorbitant dowry demands from Nisha Sharma and her family on their wedding day. On 10 May 2003 Nisha, with her father’s support called in the Delhi police to arrest Munish who demanded “a car and £10,000 cash” (Dillon, 2003: 64-65). Nisha has since become a heroine of sorts. Scores of young brides-to-be are following her example and the very act of reporting exorbitant dowry demands, where previously a girl would have been expected to accept her fate more demurely.³³⁴ In terms of academic analysis, however, what does this case represent in the ongoing dowry debate? Is this a step forward in the direction of positive public action to ensure the working of a forty-two-year-old statute law? Does this represent the much-demanded change in attitude that academics and activists have been calling for? This section will employ this new evidence to examine the progress and status of the current dowry debate.

The current urgency to examine this debate is the danger of intensely patriarchal traditions being hijacked as symbols to emulate by the *Hindutva* brigade. A call to reinstitute Sati as an acceptable practice has already been asserted.³³⁵ There appears a clear co-relation between reiterating the traditional *Brahmanaical* patriarchy and undermining the autonomy of women. The State is turning to the past, glorifying

³³³ Dillon, Amrit [2003]: “The Bride who said I don’t” *Now Magazine*. 23 July 2003. London, Stamford: IPC Media.

³³⁴ See “Delhi girls rebel over dowries”, 2003/05/19 Sanjeev Srivastava, BBC correspondent in Delhi where three middle class girls over a span of ten days refused marriage gaining inspiration from Nisha Sharma. (http://news.bbc.co.uk/world/south_asia/3040681.stm).

³³⁵ There is an ongoing debate in leading Indian newspapers discussing the present political climate in the sub-continent where a conservative regime is determined to redefine itself as a Hindu nationalist state, intending to raise old demons to glorify as new gods. See Praful Bidwai, “ingoistic hysteria takes hold of India” *Asia Times*, 17th July 1999. Sati is one such practice; there was even a call to reinstate it as an acceptable social practice, albeit a decade ago. (*Hindu Times*, 8th February, 1999). Most conservative regimes seek to undermine the position of women in an attempt to control and tame society (Reiter, 1975: 16-17). The reluctance of the Catholic Church to recognise the rights of women with regard to contraception and abortion is another example of this. Broadcaster Steve Bradshaw critically examined the Vatican’s campaign against contraception in the Phillipines, Kenya and Mexico tying this in with the need to control women’s sexuality not long ago. (Sunday 12th October, 2003 *Panorama*, BBC 1).

selective symbols, like exorbitant rituals, as suitable alternatives to the “corrupting” influences of the west. This element of the present makes it important to note the influence and historical relevance of the ongoing process of Westernisation and consumerism as one of the determinants of the current shape of dowry.³³⁶

Summarising the present scenario we may say succinctly that outlawing dowry outright has not been the ideal way of dealing with the ‘dowry problem’. It seems in fact to have exacerbated the volatility of the situation. This combined with the ever-growing consumerist trends of a mushrooming middle class in what is being acknowledged as the new super-power in the east, alongside China.³³⁷ New research reports that middle class Indians expect to give dowries, it is part of the status game of belonging to the right group (Saavala, 2010). This combination of factors presents a grossly disproportionate picture in the media. Not only does a father have difficulty in not giving his daughter any gifts at marriage, but girls have begun to demand trousseaus that reflect their status (Menski, 1997: 68; Jhutti, 1998: 183). There are an estimated 19 dowry-related deaths a day or one death every 75 minutes according to the latest National Crimes Bureau all India statistics. Since the original statute, the Dowry Prohibition Act, 1961 came into force on July 1st 1961,³³⁸ the situation has not improved, as the intent of the law makers would appear to hope. Many deaths, we know now, are wrongly registered as dowry killings or dowry-related suicide (Wyatt, 2008). Many other deaths go unrecorded. One can merely guess what the real figures are.

6.2 Women, dowry and law

The socio-legal significance of dowry prestations and payments appears directly linked to the position of women in wider Hindu society. As we have seen there is a clear preoccupation of early Vedic and later medieval society with the purity of lineage and clan prestige or *kula maryada*. Carrying on from this preoccupation there is a clear correlation of purity of clan with the purity of the women of that clan (Yalman, 1967:

³³⁶ See Khilnani, (1997: 197-8) for an analysis on the impact of western political ideas on India.

³³⁷ The new British Prime Minister David Cameron was recently (29th July, 2010) on a visit to India, exploring the possibility of renewing an old relationship with India, but calling it now a “special relationship”, a term normally reserved for ties of trade and friendship with the USA.

³³⁸ Notification no. S. O. 1410 dated 20th June, 1961, Gazette of India, Extraordinary, Part II, Section 3 (ii), pp. 1005.

14).³³⁹ Women carry the procreative potential to perpetuate the clan. Women of one's own clan cannot maintain or progress the lineage of their fathers and brothers, they need to be given away in order to enable their clan to receive women. Women as wives therefore can maintain and progress a male line (Fruzzetti, 1999: 29).

The payment of dowry accompanies the gift of a daughter, and this is symbolised within the marriage ritual as we have seen, in ancient and medieval marriage models. It is important to distinguish the significance of each gift with reference to the modern conceptualisation of women as daughters and wives, seen as the carriers of the line, particularly underlining the difference between status and power. With specific reference to past academic classification of dowry and bridewealth being both considered gifts travelling in the same uni-lateral direction. Tambiah (1973a) for instance does not oppose the concept of dowry with the concept of bridewealth, instead he states that the latter may be classified as a gift in itself. In Hindu marriage, as we have seen over several millennia “the dowry is quite separate from the gift of the virgin (*sa r adān*)³⁴⁰” (Fruzzetti, 1999: 30). According to Lina Fruzzetti, in the modern day Bengali version of the marriage alliance the gifts of dowry (*pon*) and the gift of the girl (*dān*) are related and taken together express the essence of the alliance. The giving of gifts marks marriages with the possibility of two groups establishing future and further ties with each other. Dowry plays an important role in this establishment of relationships, which is necessary to examine in the modern context if we must understand how dowry is conceived as complementary alliance-making behaviour, or in terms of the thesis, as *sadācāra*. In fact according to Fruzzetti's (1999: 9) findings, dowry precedes the marriage ritual itself and may be classified as a purely economic activity. Fruzzetti's study was concerned with the dual nature of the exchange within the marriage system in Bengal. She examines the convergence of how the sacred and the non-sacred interact in the hierarchical system of a caste society. This aspect of her study is of particular note to the subject of this thesis in an examination of ideals based on clan-rank and status purity, linked directly with the pursuance of prestige, fame and respect on the one hand and bartering for better ancestry

³³⁹ See in particular Nur Yalman's (1962; 1967) pioneering research on the inter-linkage between clan purity and its boundaries and how this is influenced by the question of women's purity in the specific geographical regions of south India (Malabar) and Sri Lanka (Ceylon).

³⁴⁰ The translation of the term *sa r adān* is used by Fruzzetti (1999: 8-9) to represent “the gift of the virgin”. However, linguistically it is a complex Sanskrit term, a compound of two words: *sampra* and *dān* thus carrying within it the notion that it is the ‘*sampra*’ or complete even supreme gift. In Bengal today marriages are made up of two elements, which go to reflect a link to the making of marriages from the past as well: the gift of the girl (*sa r adān*) and the payment of dowry (*pon*).

on the other. In this sense Fruzzetti's discussion of Bengali notions of 'right and good' as expressed through the rituals of marriage as crucial to this study. Fruzzetti relies on two modes of exchange the giving and taking of gifts, both of which occur simultaneously in the marriage ceremonies. Fruzzetti (1999: 9-10) classifies the concepts of *pon* as dowry, *dāb* as a rightful obligatory gift, *dān* as a bestowal and *paona* as a gift given for services received, one which necessitates payment to the givers of services. All of these involve numerous kin relations in bloodline and in marriage, caste brothers and others.

If we consider the case of modern day Bengal here, to contrast and compare the case of medieval Bengal, we find crucial links between dowry and marriage negotiation behaviour considered appropriate in terms of *sadācāra*. As researched by Fruzzetti (1999: 17) the significance of the *sa r adān* or supreme gift that a father must make are governed by kinship rules, which are enshrined within the rites and rituals performed in marriage ceremonies. This is the very core of *sadācāra*. The behaviour enjoined in the customary practices surrounding marriage reflect the status-play and the essence of what a given society considers right and good in the given context. In terms of marriage the father's gift of his daughter as *sa r adān* to a groom, under the guidance of a *Brahman* priest as we evidenced in the *da* model, is governed by a set of rites.³⁴¹ This process of making the gift transforms the groom into the son-in-law (*ā ā*) to the bride's natal family and the bride into a "wife-mother" (*bo ā*) of the groom's household. Each action is performed in a series of ritual occurrences, attended by incantations and recitations. Marriage rites and rules mirror the Bengali construction and significance of the person, the cosmogony of persons and who is performing what act at the time of marriage, this is crucial especially in terms of who can marry whom. As Fruzzetti (1999: 17-18) underlines therefore, "discussing marriage rules is in fact discussing an indigenous domain of kinship". This idea of kinship being so closely entwined within the notion of marriage and dowry is crucial to understanding how *sadācāra* works. Whether or not people label the behaviour overtly as 'good behaviour' or 'right behaviour' the conceptualisation at play is one that centres on the following of *dharma* or behaviour that is considered right and good in terms of clan-rank, and wider societal harmony.

The most supreme gift a man may bestow in his lifetime, the one from which he acquires maximum merit or *punya*, is the act of giving his daughter in marriage. The

³⁴¹ See section 5.2.1 above, discussing the model hierogamy contained in the verses of *gveda* .85.

observance of marriage rules, and an insistence on the correct ways in which the gift should be made are a pre-occupation of the discussions leading up to the actual ceremony. If we put this in the context of the Dowry Prohibition rules in the years after the Act was passed in 1961 we have a curious situation. On the one hand the father, and in effect the parents of the bride feel impelled to give dowry by the sense of *sadācāra* at play which underlines the adherence to custom as good. However, the state has begun to mediate and the word filters down into popular consciousness that the “giving and receiving of dowry” is now punishable by law.

Although the Act came into effect in 1961, no complaint was lodged under its provisions till 1975, when just one complaint was registered. It was felt that by criminalising the potential victims of the crime, the parents of the girl and the bride herself, in the wording of the Act, as “the givers” the law makers had in effect woven in a problem. It was after much agitation to relieve the parents of the bride from the burden of having to be criminalised themselves that several women’s organisations like the Forum Against Oppression of Women, Bombay (Shukla, 1985: 6) and others brought this to the notice of the judiciary. However, in spite of having a working group to address this issue, with specific reference to the working of the Act, the Joint Committee of the Houses of Parliament observed on 11 August 1982:

The Committee feels that the giver of the dowry i.e. the parents should not be equated with those who take dowry. The giver of dowry is more a victim than a criminal. The parents do not give dowry out of their free will but are compelled to do so. Further, when both the giver and the taker are punishable no giver can be expected to come forward to make a complaint.

The members in their argument seem to acknowledge that ‘something compels’ the parents to act in contravention of the law. There is an unspoken acceptance that the Committee sympathises, even understands this behaviour. And here we have attested notes that demonstrate the ‘giving’ of dowry is not bad, that somehow ‘demanding’ it is improper, and should be punished. The Committee are therefore of the opinion that only those who take dowry or abet the taking of dowry should be punished. The law appears to want to influence the extortionate nature of the custom, in terms of attempting to curb the greed rather than oppose the custom itself. Interestingly, after several deliberations the final notes amending the DPA added in 1984, however, made the taking and giving of dowry punishable with a six-month prison term.

Two aspects of the amendment of 1984 were criticised by women's groups. Firstly, that it held both givers and receivers of dowry as equally culpable, and therefore deserving of the same punishment. This prevents complaints being registered by those giving dowry. Secondly, it gives sanctity to any amount of gifts made to the bride and bridegroom which can lead to the blatant re-labelling of any dowry payments and prestations as 'gifts'. The one aspect of the amendments that has been considered praiseworthy was the recognition that not just taking dowry, but even "demanding" it was to be considered an offence. Section 7 of the Amendment allows the courts to take cognizance of dowry offences based on a FIR police report or a complaint made by any aggrieved party; a parent or guardian, or even a welfare organisation.

A number of contemporary studies assess the current scenario with reference to dowry as a "problem" in India. These pan-Indian studies seem to have their statistics stilted toward presenting solutions rather than getting to the core of the issue. Most often the research agenda of these studies is to generate public interest on the "women's question" (Shukla, 1985: 1-3). A host of these papers sit on shelves, uncatalogued and unpublished, as the government continues to shift its activist focus to more pertinent issues. One of these studies carried out on the academic agenda of the IWM in the early 1980s evaluated the oppositionality of women attempting to control their own destinies when it came to a breakdown in marriage, based on the patriarchally constructed clan codes that operate in several regions of modern India, based on the older clan charters we discussed in chapter 5. It is evident from the fieldwork carried out during this period that women from the same area classified themselves on the basis of whether they were bought or sold in marriage, attaching a degree of significance to the means of exchange. In the case quoted below, a woman who had been brutally attacked by her husband in the presence of her eighteen month old son with an axe, on account of not having brought enough dowry, still holds to the prestige of the system of gift giving that potentially fractured her family life. She in turn finally walked out of her marriage, and chose a life of manual labour, considered demeaning in her community and caste.

"But aren't you also a Maratha like Gangubai?"

We asked Subhadra who has recently joined a friend as domestic maid.

"No, not like her" clarifies Subhadra regarding the distinction between herself and Gangubai, both Marathas but from different regions. Subhadra conceals none of the pride

she feels belonging to what she calls a proper *K a r ya* family. She adds with much strength of feeling:

“We are from Shivaji’s clan. They (Gangubai) come from Konkan. My name is Jadhav. My sister married a Bhonsale. During my marriage my father gave a hunda (dowry) of 18,000 rupees. My aunts will get 35,000 now when each of their sons get married.”

Subhadra sees nothing wrong in these large sums being given during her marriage or her aunt getting it for her son. On the contrary, she expresses scorn for Gangubai whom she sees as belonging to a low caste Maratha. She goes on to tell us that Gangubai and her people “sell their daughters for three or four hundred rupees.” This clearly indicates that there is bride price in Gangubai’s caste and dowry in Subhadra’s (Bhattacharya, 1984: 2). Therefore we see that the perceptions of status and rank are complex on the ground. Subhadra chose to work as a domestic servant, turning her back on her family to uphold the code of honour which she believes she owes to her heritage. Where did she access this code from? Who informed her that honour was above all else? And why does she still believe in dowry as a custom being the better way? In her words we see a simple, yet poignant summary of what many women believe is their lot after a bad dowry marriage. At least she lived to recount her story. In her version, as quoted below the idealised form of marriage is the one that is accompanied by a dowry.

Usually the Maharashtrian women who work as domestics belong to more backward regions of Konkan unlike her.

“Our women do not work. They never leave the house or show their faces. Like the Muslims we too must cover our heads, only heads, only we do it with our saree.”

Subhadra demonstrates how she would cover her head obliquely with the pallu if she had to live amongst her own people, in her village which is alas a distant reality. Subhadra has taken a solemn vow never to turn back towards her birthplace at Osmanabad District while her husband is still alive. The true *a r ya* that she is her vow is to be taken seriously when we consider the rigid codes of this clan about honour and dignity.

“We have hunda so that our women do not work,” adds Subhadra coming very close to the economist’s analysis of the dowry system; that the latter is directly related to the value of women’s productive labour (Bhattacharya, 1984: 3-4).

The rationale for why dowry is important in marriage negotiations encapsulates the popular reasoning, which accompanies most contemporary discussions on the subject.

Whether in an academic or activist context it is clearly underlined as the form of marriage payment, most likely to be upheld as positive in the eyes of the community. Here again we see the clear stamp of *sadācāra*. Dowry is good, even if the husband beats the woman for not bringing more of it, as this particular case attests. The practice of the custom itself strengthens the status of an entire caste, as the respondent claims. Similar behaviour is documented in several studies, and in case after case the reason for giving or taking dowry is never questioned, as we will see in the section below.

Madan (1975: 231) found in his study of the Pandits of Kashmir a similar belief system between wife givers and takers.

“The most striking feature of the ceremony is that the wife-takers appear in the role of supplicants and, when the gifts are exchanged, their spokesman spreads the hem of his gown wide, bows and stretches his arms, all in the manner of a recipient, to accept the gifts. This is the beginning: ever afterwards the gifts flow unidirectionally from wife-givers to wife-takers. When the marriage takes place, the girl is bedecked with fine clothes and ornaments, and given as a gift to her husband. The *kanyadān* (gift of the virgin) is one of the central rites in the marriage ritual. Contrary to what is said at the promise-giving ceremony, many gifts of various kinds, accompany the bride to her conjugal household.

Those who give gifts also give deference to those who receive them.

Unlike other receivers of gifts who become demeaned by the act (this is true of, for instance, Pandit priests vis-à-vis their patrons), wife-takers assume the higher status in relation to wife -givers after the promise-giving ceremony.”

Madan’s research, in conjunction with Vatuk’s covering northern Indian communities, and Fruzzetti and Inden’s work covering the western groups point to a behaviour pattern prevalent in a much wider community. From other research studies carried out through the TISS and the women’s cell the mindset revealed is one that accepts that dowry should accompany a marriage to set a certain stature for the marrying couple in wider society. There is evidence that this behaviour follows a clan code, as Inden’s work on medieval Bengal found, where the use of the word *Kul* or clan, “signifies a cross cultural network of what came to be known as *kulin pratha* (customs related to being a kulin) all over India” (Bhattacharya, 1984: 3). There seems to be a clear pattern of behaviour signifying a pre-occupation with clan prestige, fame and respect tied in with the customary gift giving behaviour in a large number of communities in India. That the *kulin* preoccupation

with preserving or trading status for wealth is so widespread goes to the very core of the issue. Dowry needs to be given for a clan's prestige to be maintained and sometimes bartered, for better ancestry.

However, going quite in the reverse of what people believe, the state attempts to regulate this area of marriage negotiations and deems that gifts in consideration of marriage cannot be considered part of the dowry, which should go with or after a marriage has been made; see in particular *S Gopal Reddy* AIR 1986 SC 2184 for its judgement. This confirms that the DPA does apply to demands for dowry made during the negotiation period before the actual wedding takes place. The courts already recognised that this area must be brought within the scope of the statute law. The legal definition of dowry was sought to be expanded from the original in 1961 to 1984 and then finally 1986, which is what stands today. The legal definition, as we saw in section 4.1, however has little impact on what perceived notions of dowry continue to be. How often do people reach to a shelf to explain or even refer to the actual text of the law? This is seen in the various dowry cases, and in some First Information Reports at police stations.

This brings us to an interesting juncture in the discussion. Women are the objects being transferred with dowries. They may have little or no recourse to the current, and latest (Shelkar: 2010) definitions of what dowry should constitute. However, the understanding of what dowry *is* does not seem to be sought. It seems to be known quite clearly. In terms of links to the past and continuity there is an uncanny resonance with phrases spoken millennia ago, with words documented in Sanskrit commentaries and regional language clan-charters in the medieval period, with behaviour documented in the current century. Let us examine the case of modern day Bengal, as described by Lina Fruzzetti in *The gift of a virgin* after four years of field research in the subdivisional town of Vishnupur, district of Bankura, West Bengal in the late 1970s and early 1980s. According to documented behaviour on the part of women and their families, most often their father, there is an unconditional need to secure a good match in marriage. When this negotiation is considered, the father bears in mind the fact that the receivers of his daughter will 'expect' perhaps even demand a second, or supplementary gift if they indeed consent to accepting the gift of the daughter in the first place. In Fruzzetti's (1999: 30-31) findings the second gift is an acceptable "demand", as she describes it:

“When the offering of a virgin in marriage is considered, the giver bears in mind that the receivers will demand a second gift if they consent to the first (the virgin). There is a difference in the nature of the two exchanges: the first is a sacred gift, the highest possible, and can be neither argued about nor contested, whereas the second gift (*pon*) is a *dābi*, a demand rightfully made by the groom in return for accepting the bride. A girl’s father has both gifts in mind when he starts looking for a groom. Both dowry and bride represent wealth but the children to be born after marriage are the true wealth of a line and house. This leads to the question: if the gift of the virgin is the highest form of giving, then why does the dowry play such an important role in accepting or rejecting the girl? The answer is found in the attitude toward women in Bengali *samāj* (society).”

In clear and linear continuity we see the manner in which the behaviour of society mirrors the ideals encapsulated in layers of texts. There is a clear understanding of the “bedecking of the bride”, and how important it is to the wider significance of the status of the father and his family, in fact his ancestry. There is clear consonance that the children of the marriage are crucial to be considered when negotiating a marriage, because they will carry the blood-line.³⁴² Further, the importance and value attached to moveable wealth is underlined in the social concerns of the father or a bride to be, he must suitably “bedeck” her.

Women in Hindu culture are curiously demonised and deified in the very same breath (Arya, 2004: 35-51; Leslie, 1995: 320; Gatwood, 1985: 10). As Fruzzetti (1999: 31) finds at ground level women’s dual nature as inauspicious and auspicious, creative and destructive are reflective of the goddesses in Bengali cosmogony. The evidence therefore suggests that elaborate rituals surround the gift of a virgin and appear to unbalance the economics of dowry giving. Bride-givers tend to give unilaterally and expect nothing concrete in return, so that “one who gives the daughter should not receive anything” (Karve, 1965: 130). The inequality of givers and receivers is established by the gift itself (the *kanya*, or “virgin”) and by the ritual which brings the two groups of people together through the marriage alliance. This inequality, however, does not adhere permanently to these groups as givers and receivers in relation to other lives. It refers to their position in the ritual itself.

³⁴² See above discussion in section 5.2 on the importance of the qualities of the bride and groom as delineated in the *s* literature.

6.3 Developments in the case law

It is difficult to account for the steady rise in national crime statistics relating to dowry, both harassment and/or murder, as merely higher rates of crimes being reported. The state is forced to recognise that there continues to be a steady increase in the actual death rate of young brides. Perhaps each quarter, when it is politically correct, a fresh reform is announced to prove that the state does not tolerate cruelty to women, or indeed condone it. Whatever the motivation for the reformist stance to implement amendments made in 1986, of the various governments might be, there is some movement forward it seems in a more meaningful direction recognising that the area which requires careful scrutiny is the grey area of time during which marriage negotiations occur. Various attempts have been made in this direction by several state governments to curb the practice of dowry.

Bengal announced its own set of rules, codified as The West Bengal Dowry Prohibition Rules 1989. In the light of the discussion in section 5.2, highlighting Inden's research and Fruzzetti's more recent field work study in section 6.2, it is clear that Bengal needed a locally relevant set of rules enjoined in legal terms because dowry giving was enshrined in their clan charters in no uncertain terms. But this is by no means the preoccupation of only this state. Increasingly reports from the subcontinent display continuing reformist zeal: Himachal Pradesh instituted Dowry Probation Officers in early 2004. In November 2003 the state government of Bihar encouraged affidavits from government servants to be signed by both parties entering into a marriage, vowing not to take dowry. "The Bihar Government has given strict orders to all state employees not to take any dowry when getting married", proclaimed the article. This a clear example of seeking to influence *sadācāra*, exemplifying attempts by the state to demand appropriate behaviour from 'model' citizens, which would in turn influence the behaviour of the community at large. It appears that formal state law is continually trying to haul custom into its jurisdiction and custom remains resilient by staying away.

Other states in India, notably Bihar and Orissa, have enacted their own Dowry Acts and have constituted amendments to them. However, the most significant development as a direct result of case law and public pressure was not the Dowry (Amendment) Act of 1984 but the Criminal Law (Second Amendment Act of 1983) wherein Section 498A has been introduced to tackle violence relating to women, and is defined as "cruelty" by the husband or his relatives. Interestingly the definition of cruelty in this Act sets a wide scope, by including "driving a woman to commit suicide or to

cause grave injury to her mental or physical health because of her failure to meet property demands". This insertion into the Indian Penal Code was hailed as a step in the right direction by organisations like the Forum and Women's Centre, because they felt that finally not just wife beating and murder but that recognition of causing a woman to commit suicide was perceived as a criminal act as well (Shukla, 1985: 9). The reformist zeal of the state is palpable here. It is clearly evident that in the two decades after the institution of the original DPA several gruesome cases of dowry related death and murder came to light in India's capital New Delhi, where the Central government is based. It was suggested that public outcry, coupled with militant press attention, and protests from various women's groups forced Parliament to look into the ineffectiveness of the DPA in bringing culprits to justice. It was seen as necessary to institute a separate provision in the criminal code to enable the police and the state to save face almost, to prove that they were not turning away.

The crucial concern, overlooked until recently, is that dowry negotiations occupy this grey area outside the immediate control of formal law.³⁴³ Discussions about what, when and how much take place months, sometimes years, before the actual ceremony and since there is a time lapse between the negotiations, the engagement ceremony and finally the marriage ceremony, it often causes confusion about the original negotiations that have taken place. Rarely is any documentation maintained about the discussions and bartering that took place. The only documentation, if any, is usually a list of items sent at the time of the marriage, when the girl leaves her parental home. Often even these are not maintained. The common belief is that this sort of documentation creates suspicion, much like pre-nuptial agreements, which presuppose the demise of the marriage. There is a degree of apprehension about pre-empting trouble in a marriage before it is solemnised. The call was made for maintaining a comprehensive list of dowry gifts, as an annexure to the main statute, as Section 6, called The Dowry Prohibition (Maintenance of List of Presents to the Bride and the Bridegroom) Rules, 1985. This amendment to the main body of the statute has had considerable trouble of its own. Part of the reason why Dowry Probation Officers were instituted was for the overseeing of this aspect of the statute. It does seem unwieldy to intend policing an entire nation of marriage makers, considering how popular the institution of marriage remains in the Indian public consciousness. A

³⁴³ *S Gopal Reddy* AIR 1986 SC 2184.

simple scroll through the host of satellite and cable channels in India will show the wide section of popular television dramas and soap operas that concern themselves with the matters of making and breaking marriages.

The social importance linked to marriage creates an eagerness for parents to marry their children. This often leads to them committing to arrangements that they are later unable to honour. The fear of a broken engagement, social stigma against girls who remain unmarried beyond a reasonable age, and the overriding emphasis on securing good matches lead to situations where some promises may not be kept. This is sometimes the reason for arguments and discrepancy about the amount of dowry and how it was arranged to be paid. “Demands for dowry have been camouflaged after the passing of the Dowry Prohibition Act, 1961, and its amendments in 1984. In few cases, demands are made hours before the wedding and there have been instances when the bride’s family have cancelled the wedding” (Muzumdar, 2001: 398).

Often, as stated by Prof. Muzumdar when dowry arrangements go wrong it leads to incomplete marriages, which lead to worse stigma against the bride who must return to her parents (Muzumdar, 2001: 398). Menski (2009) reports, however, that in some South Indian marriages dowry promises were quite deliberately broken, so that the family could take the bride back – she kept her married status, but the dowry remained unpaid.³⁴⁴

Lesser stigma is attached to the unmarried boy. Dowry has regularly been the cause of girls being left before the fire. However, it is also reported that a more dangerous situation occurs when the girls are sent with promises that the demanded amount will be met with later: this often ends in the tragic death of a young bride. Activists and feminists claim that such deaths can be averted by the bride’s parent’s being canny to these extortionist situations. Is that realistic, however? This is an issue that needs to be researched from a psychological standpoint. Why do some parents appear to send daughters to their death?

Little can be done to resolve situations when part or the entire dowry has been given and no marriage takes place because more is demanded at the time of the ceremony. There may be no witnesses to the payment having been made, or discrepancies between what the two parties claim was discussed and decided upon. Dowry, however, is not a guarantee of either a safe or good marriage. There appears to be a reassertion in

³⁴⁴ Oral communication based on unpublished fieldwork results.

society that a good dowry (usually meaning beyond one's means) will secure a good marriage. The dutifulness of the father appears to tie-in with his role as the provider and negotiator of the dowry. In his absence the responsibility falls on another male member of the family or community, the negotiations are always between men. This seems to imply that the girl is not the primary concern for the boy's family. The patterns of the negotiations that surround a marriage are influenced by the inputs from elder women, who by virtue of their age represent figureheads of the patriarchy. A girl's dowry rarely includes items of personal interest to the girl alone (Hershman, 1981: 244; Agarwal, 1998: 137). The emphasis on dowry representing status is crucial. All these elements require further academic and social analysis.

The conceptualisation of dowry as an obligatory non-reciprocatory gift allows it to become a hazardous patriarchal construct enabling brothers to cheat sisters, and husbands to garner wealth at the expense of first wives. How is it that men who have killed their wives are re-married within a matter of days? And women remain widows for years without the hope of remarriage? How can the killing of a wife be considered acceptable? Why do parents often send the sister of a dead daughter to the same house where their first child was murdered?³⁴⁵ What makes the fathers of girls accept servility? These questions point us toward an examination of admittedly difficult academic terrain in examining the mindset that underlies the practice of bride-burning and dowry murder. Mary McGee's (2000: 1-56) carefully constructed article highlighting the interplay of three academically problematic areas: religion, gender and politics is important to the discussion here. McGee (2000: 8-9) examines the cultural symbolism scrutinising "gender(ed)" constructs in ancient traditions and texts. She cautions, that "...our identification of certain texts as 'religious' reflects modern, western categories of value and analysis that could indeed get in the way of our reading of (and even selection of) texts, just as analysing ancient as well as contemporary structures with twentieth-century notions of gender could potentially cause us to miss important variables". Further, Goldman (2000: 57-8) observes that Sanskrit is patterned as a "patriarchal idiom" and important to our question of female agency here is Goldman's conclusion that despite partaking of this hegemonic idiom, female masters of Sanskrit might gain certain

³⁴⁵ In an interview conducted for a short documentary on dowry, Prof. Kalindi Mazumdar cited a case where in December 2002 the parents sent the sister of the dead girl to replace the first girl. This is an accepted practice in certain communities in Maharashtra, and an area for further research.

individual prestige,³⁴⁶ but their “power base” is not substantially altered by this acquisition of the ritually superior language.³⁴⁷ Once we recognise this, the patriarchal mechanism at play within both textual and customary beliefs of what is superior becomes plain.

Returning to our argument; is it not important to recognise murder as murder and not attach a cultural label to it in order for it to become excusable? Shouldn't dowry murder be classified as homicide and not filed away as an unsolved suicide? Why doesn't social rationale prevail? Why does society regurgitate customs that endanger its survival? Are we missing something? Is dowry murder acceptable if the girl somehow threatens to tip the balance of the home she has just entered? Is she removed because she is in the way of stability? Does ritual killing come into focus here as it did with Sati? (see Halbfass, 1991: 87-130). Sati was a wonderful way of taking over the property of a widow and destroying an inauspicious burden on society. Is this an echo of the same sentiment? The sex-ratio in India is completely imbalanced, men outnumber women, is this not realised among those that seek girls? Does Indian society still function according to the dictates of an innate customary conscience which emphasizes the harmony of the whole? In the current global context is India still concerned only with the ritual safety of the tiny modules that maintain and uphold the greater whole?

The link between domestic violence and dowry harassment and death requires further research in order to be meaningfully established. This chapter establishes these critical links using published reports from social workers from Sakhya,³⁴⁸ the dowry cell working in tandem with the Mumbai Police gathered over 15 years. Prof. Muzumdar (2001: 397-413) has compiled a comprehensive overview examining the social and psychological consequences of dowry violence. It is almost as though the administration felt the need to make a special provision to file away the “unexplained deaths” that seemed to be rising across the country. Instead of recognising the high incidence of wife-beaters, and rather be dubbed as a state that encouraged wife murder, a convenient catch phrase was coined. This is not to say that dowry is not a problem. Equating a woman with wealth is devaluing her as a person. Neither bride-price nor dowry practices are

³⁴⁶ As Gargi seems to have gained, as one of the possible female Sanskrit scholars to permeate popular memory; few connect her to Yājñavalkya as his learned wife.

³⁴⁷ There is no room here for a discussion, albeit brief, on the tussle between Sanskrit and its poor cousin Prakrit, which is historically considered the language of the masses.

³⁴⁸ As of August 2010, the Director and founder of Sakhya, Prof. Kalindi Mazumdar has co-opted the social work of the state into a religious organisation based out of a suburb of Bombay, called Vasai.

satisfactory in terms of women's empowerment. Women need to be able to exercise control over their property. Hindu law recognises the possibility of women owning property, but the disposal or maintenance of that property is quite another issue. A recent study by Pradeep Kumar Panda, Centre of Development Studies, on the patterns of domestic violence in Kerala shows that women who own property are less likely to encounter the threat of physical violence from their husband or in-laws.³⁴⁹ The absurd continuity of an unwritten belief system is what must be further examined. This provides clues to the continued transactions of dowry and the apparent disregard for life.

It is not possible, nor advisable to isolate the question of dowry death and domestic violence in the contemporary context from any discussion on the wider custom of dowry. Dowry may be a relatively tame accomplice in most marriages across the globe. Few young brides find themselves at the receiving end of undue harassment based on the size or content of their dowries. Fewer still face death. The prevalence of dowry death has been found in both Indian and ex-patriate Indian communities, among Hindus and non-Hindus, is it merely a "cultural crime"? Is there the whiff of something more sinister? Is "dowry death" a convenient cover-up for homicide resultant from a violent marriage? Why has dowry harassment never been identified with domestic violence? Is it so problematic to identify a solution because one has been looking in the wrong place?

A large percentage of homicide is committed by the male partner in a heterosexual relationship in most societies. Women in a domestic situation are more vulnerable to violence and abuse; more women end up dead in their homes at night than any other time of day. A recent study carried out by a forensic pathologist Dr Achala Daga, Department of Preventive and Social Medicine (2003),³⁵⁰ points to the clear correlation between domestic violence and dowry. She has analysed 2000 cases of burns alone and identified these as extreme cases of domestic violence. Has domestic violence found an acceptable misnomer in dowry harassment? Surely there are marriages that have worked despite a payment of some sort at the wedding? Recent evidence from

³⁴⁹ A recent article in *The Times of India* examines the notion that women who own property are not as vulnerable to violence within the context of bad marriages. (See Katyal, Anita (2003): *The Times of India*, Friday 27th June, 2003 pp 5).

³⁵⁰ Daga, Achala: 2004. "Burn-cases and revealing statistics" Also relevant evidence was presented by Dr Daga in her presentation "Domestic Violence and Dowry Deaths: A Study in a Public Hospital in Mumbai" where she has analysed a total of 2000 burn cases registered at the Grant Medical College, Mumbai. At the Sixth International Conference on Dowry and Bride-burning and Son Preference in India, held at New Delhi, 4th January 2003.

Maharashtra points to this. The need “to do something” to register a marriage in the eyes of a community (Menski, 1987) is supplemented with a need “to give something” to a daughter on her marriage. How can fathers and mothers send daughters into their new roles empty-handed? How indeed will brides be comfortable within new families without a sense of having a secure sense of status, which is sadly linked to property they bring with them into the new marital home, as well as the manner in which they were married?

6.4 Reworking the strategy

Balgangadhara (1994: 241) surmises: “When you look at religion as tradition, that is, as a set of practices transmitted over generations, then the term appears as a minor variation of our intuitive notion of culture: to have religion is to have culture”. These views tie in with the argument here that tradition as religion is perceived to be perpetuating the practice of dowry as a cultural symbol of Sanskritization. It is clear that there is a continuous negotiation between text and tradition in forging patterns of ‘right’ behaviour or *sadācāra*, or what is considered in the Hindu context *dharmic*. However, in terms of having instituted a statute which does not necessarily stem from the desire of those being subject to the strictures set about within it seems like a poor strategy. Clearly, it was not originally conceived as a poor strategy, but one that has succumbed to an inability to be applied into positive action.

It has emerged from the interpretation in the chapters above that the exalted position given to “text” may have been exaggerated by Orientalist scholarship (Ingalls, 1954; Lingat, 1973; Derrett, 1977). In reality it appears that the texts themselves identify their position on the working of society as a unit quite independent from their prescription, the recurrent emphasis remains on custom. Custom is identified as “queen”, not just in dispute-processing but also on questions of daily living. Custom as represented by *sadācāra* seems to take on the responsibility to underpin *dharma*, rather than the opposite. In the modern context this continues to be the case in India, and indeed in various other world communities today (Menski, 2010)³⁵¹. Despite being fluid, unwritten and often vastly changeable, even contradictory from community to community, let alone state to state, we are faced with a situation where a society governs itself by the tenets of an innate customary conscience, in turn almost dictated by the need to conform to what is

³⁵¹ See <http://ssrn.com/abstract=1621384>

considered ‘model’ behaviour. However, in the context of dowry, how is this conceptualised by those practising the custom? Why does dowry, or more generally ‘giving’ represent such a crucial part of the entire ceremonial drama of marriage? Or does it?

Few studies have focussed on the customary element of legality, which is certainly not unique to India. The Magna Carta highlights the place of custom in ruling lawfully and in fact underpins democratic government today,³⁵² as does the *dharmaśāstra* literature. This aspect of these mediaeval documents has been ignored to a great extent. Custom has always played a crucial role in forming the attitudes of people and thereby influencing their behaviour. Custom as an important ancillary to law may be recognised in legal practice today in terms of practices in place since “time immemorial” in English law, or in Hindu law legislation “for a long time”; however the essence of it has remained unarticulated. One reason for this is that custom by nature is unwritten. It is not uniform; in fact it presupposes legal plurality, something civil courts are uncomfortable with. Emerging scholarship deals with these aspects of comparative law and must be utilised to analyse the issues further (Chiba, 1986; Menski, 2006; 2010).

Here again we see the key problem at play. History has seen the influence of more than one legal code on the Indian people. Before the apparent unification under the British administration, India was a collection of myriad feudatory states and continues to function as such. The concept of a nation was remote and invading influences many. The concept of the segmentary state has been associated with understanding the development of a political system in early India (Inden, 2006). As originally formulated it referred to societies in Africa, which followed a segmentary form of social organisation not based on a clear state system. Segmentary societies are generally associated with systems where lineages determine the identities of descent groups. Although this is in a sense a contradiction in terms it corresponds to the working of ancient Indian society (Thapar, 2002: 25). One sees reflections of such a segmentary state/social organisation at work in the *panchayat* system in modern rural India; this too is in no sense uniform. It appears to have made little sense to impose uniformity on such a diverse collection of states. It was enforced however; the implication of a ‘uniform’ state and the importance of the codification of a pan-Indian legal system governing all Hindus and some non-Hindus

³⁵² The plaque at the British Library, Euston Road, London exhibiting the charter highlights the position of custom.

must be examined.³⁵³ Derrett (1978: 121) examines the problems associated with a uniform civil code with specific reference to the Special Marriage Act, 1954, pointing out that “at no point was it suggested that it should, or could replace the Hindu law itself”. Further relevant to the discussion here is his observation that this was a conscious “recognition of the viewpoint and the practice” of a majority of Hindus who live in accordance of social mores, and the principles of the *dharmasāstra* in matters of marriage. He points out that for most of these people a “civil marriage” implies a negation of everything they live by. Here is a reiteration of following custom, but under Hindu law, not the modern secular law; this view against civil marriages continues to be widely prevalent in contemporary times.

All these influences cannot be discounted as agents informing the dynamic of dowry working as a custom in contemporary times. A number of processes have been at play, and dowry as a custom must be examined within the wider framework of these. Two major players that have shaped the current custom are Sanskritisation and Westernisation. Dowry as a custom has emerged as a pan-Indian phenomenon with regional differences, in no way limited by the boundary of religion, caste or class. And yet again we see that the custom of dowry itself is chameleon-like in nature, it changes colour depending on which community we examine. It would not be inaccurate to say that dowry has as many forms as there are communities in India.

As we examined, traditionally academic writing has seen dowry primarily in terms of property. Several researchers have found that there is no clear terminology in Sanskrit for ‘dowry’ in its modern avatar (Hooja, 1969: 15; Derrett, 1984: 185). Ursula Sharma’s (1984: 66) unpacking of the *kanyadān* ideology in Hindu marriages highlights her belief like Derrett that dowry grants women social and property status, and those that bring little may face ostracism in status terms (Derrett, 1984: 183). Derrett (1984: 188) further emphasises that dowry in its traditional and modern form constitutes one part in the complex pattern of marital exchange relationships. His argument finds that there was a clear link between the dowry given and the perception of the bride’s status; he asserts the functionality of dowry as a form of gift to secure and even enhance the girls’ status in her new family (Derrett, 1984: 192). To be clear, however, Sharma (1984: 64-66)

³⁵³ Buddhist and Jain marriages continue to be governed by Hindu personal law, implying that Hindu law makes room for the ‘customs and traditions’ of other communities. Indigenous groups falling outside the pale of caste are also governed by this law.

demonstrates that dowry is not considered individual property, but that the woman acts as a mere vehicle. This notion of one that carries, ties in with the ancient terminology contained in the old marriage ceremonial verses which stress the presence of wealth, which must indeed be carried into the realm of the marriage; therefore the root *āh*, to carry. In Sharma's view (1984: 71) because the girl is simply the carrier, she herself in a modern context is not seen to be as valuable as the wealth she brings. Menski (1998: 51) observes that this view underlines a significant characteristic of modern dowry, where the procreative potential, so valued in the past, is no longer cast in inherently valuable terms, but remains unspoken because it is so "obvious to the insider". Here he succinctly clinches a crucial point, of extreme value to the present thesis. When a behaviour, a custom, a tradition is of such import, and so common, it is rarely underlined in ideal terms within textual content: therefore no clear terminology exists for the practice; text or terminology has become practice. Instead the opposite behaviour is ostracised and black-listed, so as to enjoin the preferred behaviour, which within the society everyone is aware of and practises.

Dowry in India is specific to the group that practises it. A pan-Indian legal statute demonising and criminalising so widespread and entrenched a practice was a sadly short-sighted effort on the part of the government. From the discussion here it is evident that a fresh debate is required to tackle the several issues so far raised. This thesis has gone some way to prove the links between dowry as a relevant practice in ancient India, and that historically the practice of dowry is inextricably linked to family prestige, respect and fame. This includes the social status of the girl as a new bride within a new and often unfamiliar familial set-up.

Dowry is a custom followed therefore variously; its consequences in the event of an alliance gone wrong however tend to be similar. As a custom it may have been relatively benign to begin with, although this cannot be proven with certainty. Any allusion to an ideal period concurrent with Vedic India or Indian philosophic principles appears to have a romantic gloss. It is no longer acceptable to point to "golden beginnings"; those beginnings must be researched and meaningfully analysed within the context of the present devalued status of women. In fact, the undisputed devaluation of women consistent with the ensuing historical periods points to the current status of Indian women. Women have been regarded as inferior, except when it concerns their unique procreative capacity, throughout the literature. How far should we trust this early

literature as a mirror of social practices of the time with regard to academic accuracy? It seems difficult because there is little dispute that the vast volumes of literature available from the various historical eras are far more representative of notions of the ideal than of social reality. Subsequent research and analysis have yielded varying interpretations of the past. Women were worshipped, but they did not have autonomy. Women were deified, but they had to be controlled, women represented the mother earth, but they could not own property, they were pure when controlled through marriage and impure when unmarried, whether widowed or maiden. Therefore, the ambiguity so far attached to the status of women should now be discarded. Women had, have and will continue to hold inferior status in any given patriarchal context.

An important issue examined was the conceptualisation of women as property, and women's relationship to concepts of property with reference to textual prescriptions. It has been argued that women have had definite property rights in the pre-colonial period. Simone de Beauvoir has shown that even when women's rights were largely recognised, long standing customs have actively prevented their full expression. This is certainly the case with both dowry prestations and *stridhana*. The suggestion that by creating a new economic policy to suit the British Administration land rights took on a different character, alien to the indigenous understanding of the ownership of the village, and somehow created or even caused the eruption of the dowry system is an unsubstantiated argument (Oldenburg, 2002:12). This again stems from a romantic view of village India and requires further deconstruction (Oldenburg, 2002:132). Feminist concepts of the body and ownership, in the light of Indian ideas of the wife belonging to the husband and his family over her individual human rights, particularly when a marriage breaks down require further community-specific research and analysis. It is this specific dynamic between property, procreative potential and power that need further careful scrutiny in the future through adequate research.

This thesis has established the customary nature of dowry. It further shows that in the case of dowry transactions at marriage custom has proved stronger than the prescriptions of law. In practice therefore custom overthrows text and takes the place of law. Other forms of marriage payments and transactions have been consistently displaced by dowry. An element of the ideal appears to be at play here. Dowry is conceptualised as the best form of marriage payment, as numerous textual references showed in chapter 5, above. There is no specific reference to an actual payment of dowry in the texts; there is

only emphasis on the behaviour considered right and appropriate for the bride's father and the groom. Researchers agree that there is no specific Sanskrit term utilised in the older material which directly refers to dowry in its modern avatar (Derrett, 1984: 185; Hooja, 1969: 15). This had previously led to the claim of "little dowry" in the context of Vedic India (Witzel, 1995: 1-5). However there is a preoccupation with wealth and the performance of right ritual. This is evidenced today as well. The dangers of failing to provide a daughter with a suitable dowry were highlighted also in the epic literature, as we saw in chapter 5. And once more, there is a continual reference to dowry as the reason why daughters are considered a burden. Many wedding songs and proverbs within the disparate communities of India reflect these beliefs about the girl child (Basu, 2001: 117; 128). There is an eerie similarity to the mindset across the sub-continent, girls are burdens because of the large dowries they will require, and in today's context almost expect. A tragic case in West Bengal recently bears out the tremendous hold the fear of paying out exorbitant dowries for families of more than one daughter. One poverty-stricken mother sold three of her little girls for Rs 184 each, so as to avoid such future burden (India Today online and BBC News item, 2nd September, 2012).

In the modern context therefore, dowry can no longer be meaningfully demonised in order to define it away. Case law and activism show a clear co-relation between the giving of dowry as elemental to marriage in the modern mindset, not so different from the traditional one. In order to better understand how exactly to rework this strategy, in terms of outlawing a custom, we need to institute a new research project, based through an international organisation to study and further research ongoing trends in dowry-related behaviour during marriages. There is a need to employ Malinowski's "participant-observation" method. This necessitated methodologically using the principle of internal observation by an anthropologist or social scientists, by being completely "immersed" in the culture they are studying. This further implies participating as wholly as possible in all everyday activities while observing the interactions of the informants.³⁵⁴

After a decade worth of dowry-focussed conferences at Harvard, University of London and one in India in the early years of this new century, little light seems visible at

³⁵⁴ The importance of noting this specific nature of a society has been discussed in some detail by social anthropologist Clifford Geertz, in his first chapter in *The Interpretation of Cultures* (1973), as discussed in chapter 2 above. Increasingly, ethnic detail is as crucial to the entire whole as the whole itself, the realisation that there might be as many Hinduisms as Hindus themselves. As we must note, the relevance of a plurality of pluralities is always at play in understanding both culture and law.

the end of the tunnel of questions. A new strategy must recognise the issues that appear to have been addressed in these past academic gatherings, where often participants seem unwilling to listen to others when faced with differing research or solution agenda (Menski, 1998: 222). It is a complex issue. One of the research links that required redressing has been attempted in the form of this thesis. Specifically a fresh look at several issues from the past: the historical need to gift, not just the girl, but more and the crucial link of the various forms of marriage to the notion of gift. All this combined with the fact that status as a marker in society was highly prized, and continues to be so in modern times.

In order to assess modern *sadācāra* it is worth scanning the current matrimonial columns of the most popular national daily, the *Times of India*. This paper highlights a trend in the attitudes to marriage making behaviour in Indian communities both at home and abroad. Most families seeking ‘decent’ or in our terms here, ‘appropriate’ unions seek to be seen in this best of all newspapers. It is considered a serious, well established publication, and is expensive to put advertisements in. So already there is a presumption that the family must be ‘good’ if they seek to have a matrimonial in the *Times*. Further, families well-settled abroad, seek unions mostly through this publication, for girls of Indian origin hoping to find prospective brides for sons who are more amenable to joint-family life and aspirations than their counterparts born and bred abroad. The need seems to be to seek unions which will underline a similar attitude in the up-bringing of children born in more disconnected locations like the UK and elsewhere, where having a mother accustomed to thinking in terms of societal ideals is aspired to in the traditional Indian context.

What these advertisements show is that to date dowry need not be overtly mentioned. A couple of advertisements highlighted within the Equality Marriage Section of the *Times of India* Matrimonial pages (See appendix 1) declare “NO DOWRY”, which seems more representative of the fact that these unions continue to be outside the norm. The model of marriage to follow appears to be the one which casts the status of the family, gives respect to the pursuance of wealth, and which calls for the bride to respect an adherence to joint-family ideals. In modern terms this last assertion tends to be a covert way of mentioning the production of lineage, and of course a male heir. Therefore, the attitudes of today remain, perhaps not entirely unbroken, however nonetheless in continuance with past ideals as set out through customary practice.

A new strategy must therefore utilise the past efforts of the state governments where Dowry Probation Officers were instituted and re-assign them new roles to gather information on how dowry is perceived. It will be a hard task, riddled with suspicion and mistrust of state agencies, who have so far only tried to criminalise and curb dowry giving and taking. Further, policy-makers will have to enlist a department to devote itself to undertake meaningful research, using both the social activist and legal activist networks, which thrive and continue to strengthen India as a democracy. This call for a new strategy and a realisation that a very structured and well-focussed legal and social agenda requires to be outlined within a meaningful dowry debate is not new.³⁵⁵

In August 2010 a legally positioned group Majlis published its findings on a linked subject, the Irretrievable Breakdown of Marriage section of the HMA. This group is vociferously advocating the people to raise their opinions to reach a meaningful pitch, so as to be heard and taken cognizance of. This is *sadācāra* in action. Here we have legal opinion seeking by an informed group, advocating and reaching out to other specialist and ordinary individuals to involve them in a decision-making process which will eventually have a bearing on their social context. It is difficult but not impossible to work alongside such grassroots organisations and work within the communities to understand the social realities better. Here we need to revert to our model of society and refer to the notion that legal notions work upwards from the people, and do not necessarily flow from the top, from governing authorities to begin with. We need to understand both sets of dowry practices, the ‘good’ where both dowry exists comfortably as an acceptable practice and the ‘bad’, where dowry-violence has caused harm to families and the wider community.

The socio-legal model which causes most confusion is the one where it is assumed that law, like water, will continue to flow from positions of authority, along the lines of legal positivism (Menski, 2006). To the contrary, law is in living motion when things go right. It is when things fall away from the norm, when damage and misunderstanding cause rifts in the functioning of a social group that they seek redress from those in a position of authority. In fact we may revert to the MDS verses which outline the stages by which law is processed, and read it now as transposed, in either the

³⁵⁵ See in much detail Menski (1998: 37; 222) for a clear call for a new research agenda, and further setting up a six-point plan on the basis of findings from several cohesive international research conferences centered on analysing the ‘dowry problem’ (1998: 219).

ancient/modern context not from the Vedas/Constitution downwards, but from the model behaviour of people upwards. So to press the point, to create an awareness of the living law we can move from the socially accepted normative behaviour of respected people, or *sadācāra*. Clearly in the misunderstanding that dowry was itself the problem and not the ‘bad’ form where women are actively objectified and dismissed as mere carriers of wealth the enactment of a law, which did not dare ban a custom the DPA fell prey to its own ineffectiveness. While enacting rules therefore we may need to move from the position of authority down.

Although it is not the intent of this research to suggest solutions, however it would be wrong to not summarise possible options for future research, which will further aid an understanding of the wider, and more specific, issue of dowry.

Therefore:

- A new research agenda must be set highlighting all the angles to be studied;
- A state-funded and academically drawn programme must utilise social and legal agencies to study the specificity of dowry;
- Academic and Non-governmental agencies must collate all the research data available to date and begin to synthesize this;
- Media and press must disseminate the information that dowry and dowry murder are two disparate issues.

Finally, it is important to clarify the role of academia on the route for redressing a socially motivated phenomenon like dowry. Research, and even law, can only go so far. Self-restraint was advocated in the past, but the entanglement of social status, traditional practises and culturally specific behaviour make such suggestion virtually impossible to apply (Menski, 1998: 55). In India’s new found confidence as a burgeoning world economy, dowry is actually bound to thrive rather than to decline. Besides it has been and is still seen after all as a marker of status in communities both at home and abroad, which will only add a newer dimension to its practice (Jhutti, 1998: 191-194; Saavala, 2010). A specialised research project, enlisting experts should include linguistic learning to access the past, sociological analysts, legal professionals, and social activists. Apart from this a clear information gathering agenda must be set incorporating an active research principle

to understand the functioning of social norms in their culturally specific habitat. The need for further research at ground level remains real.

"Dowry-Death-Index" or "Death-Index" is defined as the number of dowry-death per million population.

	1997 Downy Death Numbers	1992 Death Index	1992 Downy Death Numbers	1993 Death Index	1993 Downy Death Numbers	1994 Death Index	1994 Downy Death Numbers	1995 Death Index	1995 Downy Death Numbers	1996 Death Index	1996 Downy Death Numbers	1997 Death Index	1997 Downy Death Numbers	1998 Death Index	1998 Downy Death Numbers	1999 Death Index	1999 Downy Death Numbers	2000 Death Index	2000 Downy Death Numbers	
1 Andhra Pradesh	411	6	424	6	575	8	386	6	382	5	411	6	520	7	500	7	452	6	442	6
2 Arunachal Pradesh	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
3 Assam	14	1	1	0	19	1	13	1	44	2	28	1	22	1	32	1	40	2	50	2
4 Bihar	283	3	170	2	338	4	286	3	383	4	478	5	781	8	1,038	10	1,021	10	1,021	10
5 Goa	0	0	1	1	2	2	0	2	2	2	1	1	3	2	3	2	2	2	2	2
6 Gujarat	103	2	123	3	114	3	105	2	61	1	105	2	87	2	90	2	94	2	93	2
7 Haryana	144	9	209	12	166	10	191	11	218	12	223	12	287	14	287	16	288	14	283	13
8 Himachal Pradesh	30	6	18	3	18	3	4	1	6	1	6	1	12	2	7	1	5	1	4	4
9 Jammu & Kashmir	9	1	30	4	20	2	1	0	5	1	0	0	12	1	9	1	6	1	10	1
10 Karnataka	227	5	209	5	265	6	170	4	202	4	182	4	195	4	200	4	217	4	217	4
11 Kerala	13	0	18	1	10	0	9	0	21	1	25	1	25	1	21	1	31	1	25	1
12 Madhya Pradesh	423	6	350	5	370	5	354	5	417	6	577	8	550	7	598	8	554	8	685	9
13 Maharashtra	828	10	727	9	746	9	519	6	471	6	443	5	420	5	420	5	395	4	371	4
14 Manipur	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
15 Meghalaya	0	0	2	1	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0
16 Mizoram	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
17 Nagaland	0	0	0	0	0	0	2	1	0	0	0	0	0	0	0	0	0	0	0	0
18 Orissa	63	2	152	5	254	8	169	5	196	6	178	5	240	7	298	8	234	7	276	8
19 Punjab	99	5	101	5	147	7	117	5	130	6	180	8	185	8	219	10	193	8	199	8
20 Rajasthan	152	3	250	6	369	8	298	6	369	8	349	7	356	7	433	8	443	8	429	8
21 Sikkim	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
22 Tamilnadu	97	2	75	1	79	1	83	1	94	2	112	2	153	3	178	3	197	3	191	3
23 Tripura	7	3	3	1	5	2	6	2	7	2	19	6	9	3	10	3	17	5	16	5
24 Uttar Pradesh	1,597	11	1,783	13	1,952	13	1,977	13	1,550	12	1,983	13	1,786	11	2,228	14	2,098	13	2,222	13
25 West Bengal	538	8	179	3	256	4	349	5	89	1	77	1	247	3	249	3	297	3	264	4
26 Andaman & Nicobar	0	0	0	0	0	0	1	3	0	0	0	0	0	0	0	0	0	0	0	0
27 Chandigarh	2	3	1	2	3	4	3	4	1	1	2	3	4	5	5	6	7	8	2	2
28 Dadra & Nagar Haveli	0	0	0	0	0	0	1	7	0	0	0	0	0	0	0	0	0	0	0	0
29 Daman & Diu	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
30 Delhi	133	14	121	12	107	11	132	12	180	15	132	12	148	12	128	10	122	10	126	9
31 Lakshadweep	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
32 Pondicherry	4	5	6	7	0	0	4	5	3	3	1	1	2	2	1	1	4	4	3	3
33 Uttaranchal																				
34 Jharkhand																				
35 Chhattisgarh																				
36 INDIA	5,157	6	4,954	6	5,817	7	5,199	6	5,092	6	5,513	6	6,006	6	6,975	7	6,899	7	6,931	7

Table 3: All India Dowry Death Index (1991-2000) [Mumbai Crime Branch]

ATROCITIES AGAINST WOMEN FOR THE PERIOD 1995 TO 2002 (upto 08/12/2002)

Heads	1995		1996		1997		1998		1999		2000		2001		2002(upto 08/12/2002)	
	R	D	R	D	R	D	R	D	R	D	R	D	R	D	R	D
Rape	210	202	153	147	130	124	118	104	141	128	119	111	127	116	120	111
Molestation	400	351	264	216	218	202	200	148	186	166	131	106	257	226	231	213
Dowry	18	17	16	14	20	20	22	20	21	16	13	7	13	12	11	10
Dowry related suicides	83	72	59	55	44	40	49	35	43	30	28	21	37	32	37	33
Dowry related Harrassments	223	194	110	93	108	90	154	82	144	83	132	87	121	108	160	122
Teasing	67	55	56	51	38	36	35	27	55	48	59	58	54	49	50	38
Total	1001	891	658	576	558	512	578	416	590	471	482	390	609	543	609	527

SOURCE :
STATISTICS BRANCH, CRIME BRANCH MUNICIPAL

Table 4: Atrocities against Women (1995-2002) [Mumbai Crime Branch]

Chapter 7

The phantom of dowry

Without ontology or epistemology dowry functions almost, under the guise of well-established good behaviour, or *sadācāra*; Derrett (1984: 185) confirms that there is no Sanskrit word for the practice. Hooja's (1969: 15) research, the first concerted work in the area of dowry practice, also reflects that there is no ancient terminology for the practice of dowry in its modern sense. M. N. Srinivas's (1984: 13) characterisation of dowry as problematically positioned only in its modern context, as created by the British administration has been dismissed by the examination of the old textual material here. Specifically examinations of expectations within marriage guidelines, and further within the literary clues that point clearly to the accumulation of wealth, this thesis has found that dowry did indeed function as a normative marital custom. Importantly, this was considered good behaviour, and emulated.

The analysis in this chapter weaves together the various threads of my thesis argument so far, reiterating the customary nature of dowry as an established institution carried forward through a **customary collective social conscience**. The evaluation of the evidence from the ancient texts with regard to the expectations of dowry within the negotiations for marriage is further clarified. This chapter draws together the various threads of discussion from the previous six chapters to reiterate the thesis that dowry has existed as part of the Indian Hindu tradition as a major determinant in suitable marriage selections and continues to coexist with a law that cannot ban it as a defiant socially sanctioned custom. It reiterates that custom is stronger than law in practice, and therefore argues that dowry murder be examined as an obvious by-product of brutal domestic violence.

And finally, the status and role of the anti-dowry law as a meaningful strategy is reassessed. Derrett (1984: 181) claims in no uncertain terms that "Dowry does figure in the *sastra*, and has done so for a very long time." Interestingly his observation that the practice is dealt with in a "...sly fashion, half-heartedly, shamefacedly" highlights the conceptual underpinning of this intensely patriarchal construct. My thesis finds a further more tangible link, asserting that dowry has in fact existed from *gvedic* times, quite clearly. I go further to say therefore that dowry is a conceptual construct of Vedic Indian

society, conceptualised to strengthen and enjoin positive marriage unions based on the idealised model as represented in the codified traditions of textual authority.

Therefore, my thesis explored the role of tradition and text as agents in shaping the notion of dowry, and its indisputable position in Indian society today as an uncomfortable *sadācāra* or *dharma* with a very small 'd'. The thesis states therefore that dowry has existed as part of the Indian Hindu tradition as a major determinant in suitable marriage matches and continues to co-exist with a law that did not dare ban it as a defiant socially sanctioned custom because dowry negotiations occur in an area outside the reach of official law.

7.1 Summary conclusion and chapter summaries

That the *Brahma* form of Hindu marriage is the model for modern dowry marriage is the core argument of my thesis. In these roots lie the very murky, but discernible workings of dowry as an intricate and fail-safe system using the notion of appropriate behaviour as *sadācāra* to perpetuate itself. I have found and stated the evidence from the anthropological work of Lina Fruzetti (1996/1999) based on women in rural West Bengal clearly attest this view point. Apart from a myriad relevant references in the 'texts', the *Mahābhārata* is almost a manual of medieval marriage arrangements, clearly highlighted by Stephanie Jamison (1996). Furthermore, using the methodological tools highlighted by Ronald Inden (2006) in his appraisal of the role anthropology and history have played and continue to play in the construction of a South Asian worldview, I have claimed that within the garb of tradition lies the conceptualisation of an uncomfortable modernity, which continues to use medieval, and even ancient customs to strive for a progressive future. All this is outlined by Inden (1976; 2006) and is in support of my argument as I stated and developed in chapter two.

I discussed the conflict between the subaltern view of India, and the need to recognise itself as a nation state. Laws and a legal system are the fundamental provision of such an entity. This is where my thesis fits with the conceptual leanings of Hindu law, within the gamut of Anglo-Hindu law laid down in 1772, by the Declaration of Warren Hastings. However, the possibility for the third world to disentangle itself from both, constructions of the older European imperial ideologies and its own discourse with its past, seems an impossible task to achieve. As Inden (2006: 62) points out in summarising the role the social sciences post World War II are meant to play, "The peoples of a newly

discovered ‘third world’ are no longer to be appendages of European states, they are to become [sic.] independent, sovereign nation-states. Social scientists are to take up the question of how in the absence of direct or even indirect ‘administrative’ subordination to European centres these ‘new nations’ are to find their place in the world.”

My thesis finds itself in the position of clarifying its agenda with reference to my own position as an Indologist with anthropological training, using historical tools to examine tradition in the field of religious law. To account for the phantom of dowry, which neither has definition nor ontology within textual representations, yet is a powerful player in the field of marriage laws, is a tough ask. However, by using the excellent research that has gone before it has been possible to engage in a discourse of what dowry is and how it has formulated itself to become an entrenched partner to most Hindu, even Indian marriages. The canvas against which this custom is set is the role tradition continues to play in shaping modernity, and thereby becomes a constant in the field of marriage. Relying here on several textual and recent anthropological data confirmed that other forms of marriage prestations have been displaced in favour of dowry, which is currently established as the dominant model of marriage prestations in India. This shift adequately documented in various anthropological data, appears to have occurred along the lines of Sanskritisation whereby lower castes and classes have emulated and appropriated the symbols and practices of the highest caste in order to better their own status. Further, an important conclusion we can draw from this discovery is that a custom has claimed precedence over the rule of official law.

In fact dowry appears to function in this grey area, outside the scope of official law, which is governed in the main by custom, in an intricate interplay of rites and rituals during marriage under the aegis of clan codes. The means of knowing these codes is a complex reconstruction of remembered knowledge or *Sruti*, as contained in the four Vedas, but by first and foremost accessing the elements of that remembered knowledge filtered into the popular consciousness in terms of doing what the peer group considers right and good for its own survival as a superior unit of society. Therefore *sadācāra* spreads itself in terms of local knowledge, as an un-codified set of practises which compel actions even though they may be believed to be in contravention of the law.

Dowry as a practise is believed to be good, and therefore to practise it is considered good behaviour or *sadācāra*. As we discussed, the performance of these practises may not be called *sadācāra* as this is an archaic term contained within the academic domain of

analysis. At ground level, this good behaviour may be expressed in terms of following procedures prescribed by *kul dharma* clan-codes to uphold and maintain *kul maryada* or clan prestige. When practises contrary to the western models of behaviour, as expressed and expected during a long duration of history in British and post British-India, the clash of civilisation caused considerable readjustment on the part of the indigenous population. Several practises were not openly discussed, or even publicly acknowledged. A conspiracy of sorts seems to have been the order to the day, whereby dowry was still in practise as a revered and required custom, but as it was frowned upon, it was not openly discussed. As Indian law making, and law makers continue to acknowledge the superiority of western model jurisprudence and book centred ideals, the widespread customary behaviour of norms like dowry get pushed into the shadowy underground of apparent taboo. The nature of Indian society seems to call for a recasting of tradition in order to re-invent modernity, and therefore the attitude of fathers-of-brides-to-be tends to feel the pressure of the past and responds to the compelling need to gift, and give other valuable property with the *sampradan* of the daughter on her life-defining journey as she becomes wife, and potential mother from merely daughter. The peer pressure presents itself in two voices, one that of traditionally held beliefs, which enjoin the giving of wealth with the girl, and onwards after to secure and establish ties of kinship, and risk imprisonment for this behaviour. The other is to not give dowry and be upheld in the eyes of the law as a good father, who values a daughter above wealth, and risk the break with tradition as enjoined by generations of peers and quash the dearly held clan-codes. Now, as evidenced in the widespread practise of dowry in marriages in the past fifty years or so since the DPA (1961) was enacted the need to practise dowry has not been addressed. A father continues to feel the weight of negative pressure if he does not suitably “bedeck” his daughter and her imaginary “bridal” with the choicest of what he can afford. Instead he feels like a bad father if he does not give dowry. Girls themselves have been known to undertake jobs in distant places, earning in foreign currency to supply and support their fathers who need to ostensibly furnish the dowry payment (Saavla, 2010).

The primary aim of the thesis was to trace the development of dowry as a custom from its earliest conceptualisations to its current form. The analysis examined the beginnings of the conceptual model by laying out the ancient texts as expectations enjoined during marriage. In this manner the underlying practice of dowry was sifted from the preserved words and preoccupations of a distant society in the light of their

aspirational ideals laid out in the many layers of a contradictory textual tradition. My intent was to outline a conceptual model for the functioning of dowry expectations as an accepted custom and thereby produce an in-depth study of the conceptual framework that underlies the custom of dowry. Was the custom of dowry blameworthy in essence? Dowry as a custom may not be as problematic as it has been made out to be by confused attempts at law-making. The attempt of this thesis to examine dowry as a complex conglomerate of culture set out the following:

1] Formulate a meaningful conceptual model to analyse the perpetuation of dowry

The conceptual model to meaningfully analyse and assess the perpetuation for dowry as a custom is the well-defined sacred and superior structure for human marriages set out in the *ūr yās k a* verses of *da X.85*. Additionally, the enjoinder to give wealth in the verses of Book 14 of the *Atharvaveda*, clearly constitutes the giving of dowry as exemplary good behaviour from the earliest notions of human marriages based on the divine.

2] Emphasise the role of custom over the hold of law in terms of application

Any assessment of the DPA and its amendments clearly shows a lack of applicability, when a legal provision is not rooted in the belief system of the people it attempts to serve. Therefore, the hold of custom wins out over the influence of law in the Indian context with specific reference to dowry practises, by enshrining the sum of initially Rs. 2000, updated in the 1980s to Rs. 5000 as an acceptable cash sum to constitute symbolic dowry.

3] Distinguish the custom of dowry as separate from the act of dowry murder

That violent death is associated with dowry demands gone wrong is not in dispute, but there has been a messy overlap between domestic violence fuelled homicides as versus specific cases of dowry related murder. Future research must address this overlap, in order to redress it.

4] Identify the displacement of other marriage transactions in favour of dowry

Discussions in chapters 4 and 5, and part of chapter 6 demonstrated how the dowry model of marriage has displaced all other forms of marriage not just in Hindu communities but as an economic transaction to barter for better social standing in pan-Indian communities, at home and abroad.

7.1.2 Chapter summaries

The following summaries form the concluding assessment of this thesis and its aims as defined briefly above, and demonstrate the core conclusion of the argument here. This will lead into the final concluding analysis.

In **chapter 2** my thesis examined the negotiation between custom and text in the understanding of legality in the context of ancient India, this chapter principally focuses on the traditional cultural texts themselves, since it is crucial to understand the role of the Hindu textual tradition in society as encapsulated in the Vedic and later *s* tradition. In examining the place of texts it was crucial to note the varying agenda of much of the research conducted on and around Indian traditional texts. My study focussed on *Brahmanical* Sanskrit texts, regarded as religious texts by early scholars, but classed as cultural texts within this thesis. Propelled by a strong literary bias, western scholars interpreted ancient Indian data as religious “texts”. To counter this critique of Hindu tradition nationalists sought to prove that women, specifically in Vedic India had been accorded a high position. The dominant trend among nationalist writers was to glorify the past position of Indian women. Before it became an established academic tradition, several factors influenced the nationalist discourse on women. It was believed that the older the text the greater its authenticity regarding women and, further Indian scholars adopted the nationalist rhetoric of a “golden age” as a historical paradigm to study the status of women in ancient India. Altekar’s recommendation for the emancipation of modern Indian women is not only limited but patronizing. My study has focussed on the *Brahmanical* Sanskrit texts, regarded as religious texts by early scholars.

‘Texts’ are collections of tradition, we may conclude. Women do not appear to be composing teachings or observations during the ancient period or even expressing their views on women’s role in society. To examine the role tradition has played in shaping texts is most clear when we consider the role expectations of women contained in the *Brahmanical* discourse. In answering this question the influence of tradition over text and thereby of text over tradition became clearer. Notably, women are mostly identified by their physiological and bodily functions. In feminist terms they are mapped onto. Chapter 2 highlighted the emphatic influence of social traditions on the way cultural texts were shaped.

So **chapter 3** exposed the inherent tensions between legal text and social custom. Further it demonstrated the argument of text versus custom and modern law in India,

including the role of the state in formulating legal statute. The methodological approach here took into account the importance of ‘legal pluralism’: briefly this thesis confirms, as Indian legal systems past and present display, classic signs of two or more laws interacting.³⁵⁶ Since the primary source materials employed here are ancient Indian texts, the application of textual and legal anthropology is important. Chiba’s observation that historically law has been studied in exclusion from its social environment was taken up and discussed. The working of the dowry system as a legal postulate shows up as a resilient social norm in constant conflict with official law. The definition of *sastra* as law book or “works of law” seems reductionist, almost restrictive. *Dharma* has to date been variously explained; as law, custom, righteousness even duty and religion. I demonstrated how families negotiate between official laws of the state and custom in the way they practice dowry. How indeed do modern Indian families view these texts, are they thought of as guidebooks or law?

Modern Indian legal statutes similar to the ancient texts offer only guidance, it is not legal prescription; *ought* not *is*. It appears that formal state law is continually trying to haul custom into its jurisdiction while custom remains resilient. The current formal dowry law attempts to ban dowry as a custom in order to check the occurrence of widespread dowry murder. Hindu law has been battling with the social consequences of outlawing bigamy, child marriage, sati and dowry for half a century. Tradition, or what one considers unwritten custom, is in direct conflict with the dictates of state-law, with tradition or custom frequently overriding law. Criminalising dowry has not worked, as Derrett, a legal theorist and Dumont, a social scientist warned. The dowry system remains stubbornly in place. In 2002 1,512 cases of harassment by in-laws were registered. Returning to the thread of my argument within this thesis, when examining the position of law and law making as represented by these ancient texts, we find dowry unwritten but very present as a customary practise throughout the textual material.

And, the analysis in **chapter 4** holds that this custom of dowry demands, and even dowry marriages are an accepted norm in wider Indian society through a wide historical period. In terms of defining terminology Srinivas (1984: 11-13) categorically distinguishes modern dowry from both *dakṣ na* or gift, and *s rīdhan*. His assertions that the modern monstrosity of dowry being linked to the notion of *dakṣ na* was fallacious.

³⁵⁶ Most legal systems display this intersection of two or more laws; it is therefore a feature not unique to Indian legal systems.

His view was that modern dowry was bad, and that ancient forms of dowry as related to the *kanya dan Brahma* form of marriage were somehow good. Here we see reflections from our discussion in chapter 2, about the deep influence of nationalist thinking on academia, and the casting of golden origins (Rabinow, 1984) searching for a golden age of good behaviour.

Further, the tussle between dowry and bride-price was explored, demonstrably dowry displaced bride-price. As a customary norm therefore dowry marriages have expectations implicit in their very practise. The evidence of dowry present in the literary sources available on Hindu marriage negotiations yielded clues to the nature of the practice of dowry prestations as a custom considered exemplary by a socially elite group. This social elite, then comes to represent those to be emulated by all of society. In a modern context, this becomes wider than the Hindu community. Suddenly dowry *sadācāra* applies to others as well, Hindu or not. Therefore in terms of Sanskritisation (Staal, 1963) the behaviour of an elite group infects the wider community.

A detailed examination of the *Brahma* form of marriage and its subsequent codification as the legal form of marriage valid for all Hindus, in the modern Hindu Marriage Act (1955) therefore was necessary. This conceptualisation of marriage at a pan-Indian level in the explicit terms of *kanya dan* as the best form of marriage, and the best form of gift highlights the emphatic idealisation of dowry marriage in the current context (Raheja, 1988: 121). The theory of gift-giving as discussed examined Marcel Mauss's conceptual examination of marriage prestations. Succinctly: Other forms of marriage prestations have been displaced in favour of dowry, which is currently established as the dominant model of marriage prestations in India. Hypergamy has had an indelible impact on the nature of dowry; whereby the *Brahma* form of marriage as dowry marriage, incorporating and assimilating *Āsura* form into a new form of modern Hindu even Indian marriage. The examination has shown that Muslim, and Christian marriages include dowry payments. While considering the position of women as property it became clear that women in the ancient context are seen to belong to the husband and by extension to his clan, for the precise object of procreation and protection of the male line. The tussle between dowry and bride-price demonstrated that dowry displaces bride-price. My belief is that dowry and dowry-related practices both during and after the marriage are governed by these fluid rules operating within the jurisdiction of custom. Dowry is contemporary *sadācāra*.

As we saw in **chapter 5** the discussion mainly covered what the texts express on the nature of Hindu marriage in its various forms and how certain marriage transactions emerge as norms. Most pertinent to the present argument is the fact that this form of marriage does in fact bear resemblance to the divine marriage of *ū ryā* with *Soma*, as described in the ṛgveda marriage hymn. Later marriages are modelled upon this one, and the bride is called *ū ryā* in emulation of the model marriage. Further, most contemporary studies of Hindu marriage see the *kanyadān* form of marriage as the form which is free from any gift, other than that of the “pure gift of the girl”. Of the eight valid forms of marriage few remain prevalent today. The *Brahma* form of marriage emphasises the apparently “free gift of the daughter” to a suitably chosen, qualified groom by her father or guardian. To clarify however the influential *Gautamadharmasutra* I.44, clearly states that in the *Brahma* form of marriage the maiden is gifted away “bedecked with clothes and ornaments”. Usage shows how this marriage form is not regarded as been uniquely to be used by the highest born but rather the name leads us to the expectations underlying the nomenclature. The name *Brahma* was given to this form of marriage to underline and even enjoin and ensure its emulation as the form of most esteemable marriage to be used as a model by all sections of society, regardless of their rank or clan. The *kanyadān* (gift of the virgin) is one of the central rites in the marriage ritual. Gifts must exchange hands when a bride is taken and given at a marriage ceremony. There is clear evidence that the text is enjoining the preference of marriage by gift, *Brahma* rather than marriage by purchase, *Asura*. In medieval Bengal as highlightd particularly by Inden’s (1976) research, however, a new emphasis is placed on marriage, whereby both of these marriage forms came to represent the ability to transform rank. I argued that the list of acceptable marriages, enjoining certain behaviour above another is in itself a form of textualised *sadācāra*.

Finally according to the assessment of the DPA in **chapter 6**, as Derrett said, I too do not see an end to the dowry-system. The anti-dowry law appears to have failed. It is evident that legislative measures such as the DPA have further confused a seriously complex issue. Neither dowry nor dowry murder is conceptualised by the actors as a crime at all. The socio-legal significance of dowry prestations and payments appears directly linked to the position of women in wider Hindu society. The payment of dowry accompanies the gift of a daughter, and this is symbolised within the very marriage ritual as we have seen, in ancient and medieval marriage models. In modern Hindu marriage, as

we have seen over several millennia the dowry is quite separate from the gift of the girl. Women are the objects being transferred with dowries. Demands for dowry have begun to be camouflaged after the passing of the Dowry Prohibition Act, 1961, and its amendments in 1984 and 1986. Dowry, however, is not a guarantee of either a safe or good marriage. The emphasis on dowry representing status is clearly crucial. Neither bride-price nor dowry practices are satisfactory in terms of women's empowerment however. It is not possible, nor advisable to isolate the question of dowry death and domestic violence in the contemporary context from any discussion on the wider custom of dowry. Dowry may be a relatively tame accomplice in most marriages across the globe. Many deaths are wrongly registered as dowry killings or dowry-related suicide. The continuing greed for dowry, and indeed the persistence of the customary dowry system call for a new approach altogether.

7.2 Concluding analysis through the reflexive lens

So does doing the right and proper thing flow from an understanding of text driven law? Or does it flow more naturally from tradition? Maine (1986: 1) highlighted the validity of "immemorial unwritten tradition" and his recognition of this phenomenon, is crucial to the conclusion here. In a much wider international context the notion of *sadācāra* may be equal to that of "unwritten tradition". In India more field work is required to expose the plural workings of the ancient and medieval Indian legal systems still at play. In spite of several attempts at giving (what for lack of better nomenclature continues to be called) "Hindu" law, a place on the world's legal stage little has been achieved. Essentially any 'other' systems of law remain on the outside, sub-servient still to model western jurisprudence. Whether the persistently excellent shape that the works of Prof. Derrett, Masaji Chiba and most particularly Prof. Menski (2010: Forthcoming) have given to non-western model jurisprudence will yield in the future remains to be seen. But for the present concepts and notions like the unwritten community social conscience or *sadācāra*, although not unique to Indian society, will continue to fall outside the precept of wider international society because it does not quite fit with the understanding of European models of acceptable, legal behaviour.

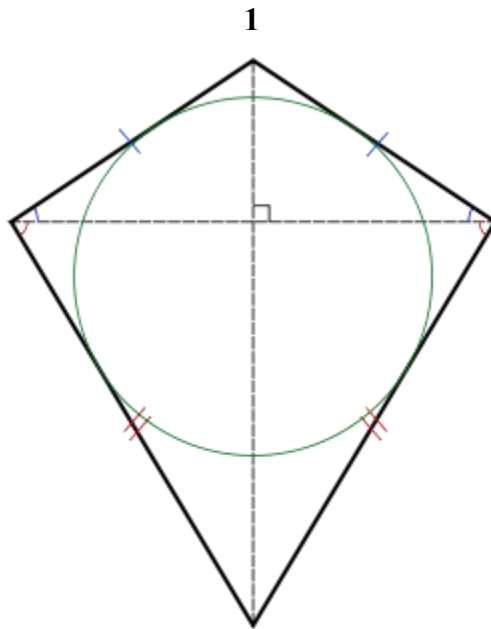
If we illustrate the field of law and society, within their anthropological context in modern India, with specific reference to dowry practice we find we are flying kites (Menski, 2010). Whether the weather is good or bad, there is always a multiplicity of

circumstances and issues working in the anthropological field of law. Developing from the notions seen in Fig. 1 above, where we saw the triangular interaction between law and religion, and custom to inform the manner in which dowry is practiced in social reality; it becomes clear that in any situational context a custom, even law, is subject to several forces in the field of practice.

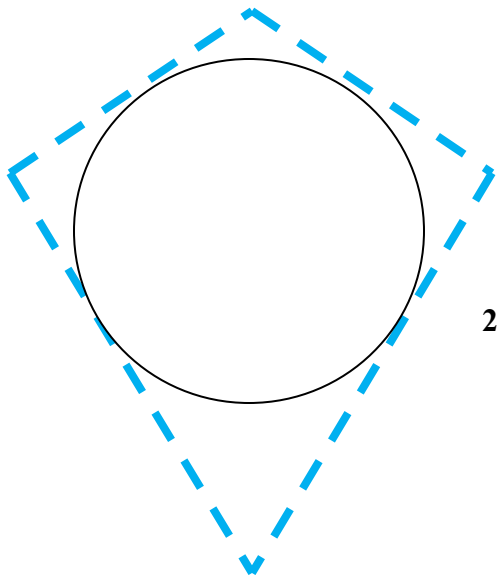
See the illustrations below for a demonstration of various possibilities of how custom and law at any given point are influenced by the plural effects of a variety of factors. This model of course is not uniquely applicable only to Indian society, but attempts to explain the field in terms of legal applicability in an International context.

Fig 7: THE FOUR PART KITE MODEL: Forces acting on custom

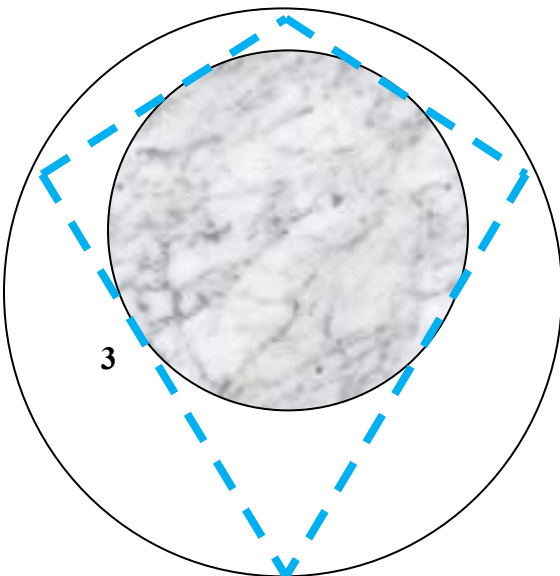
7.1: The original model: natural law/ethics



**7.2 The dashes
socio-legal approaches**



**7.3: The model with marble affect in the centre indicates messy pluralism
The outer circle frames within it everything under state law = positivism**



7.4: The model with different fields within it: International norms, human rights, new natural law

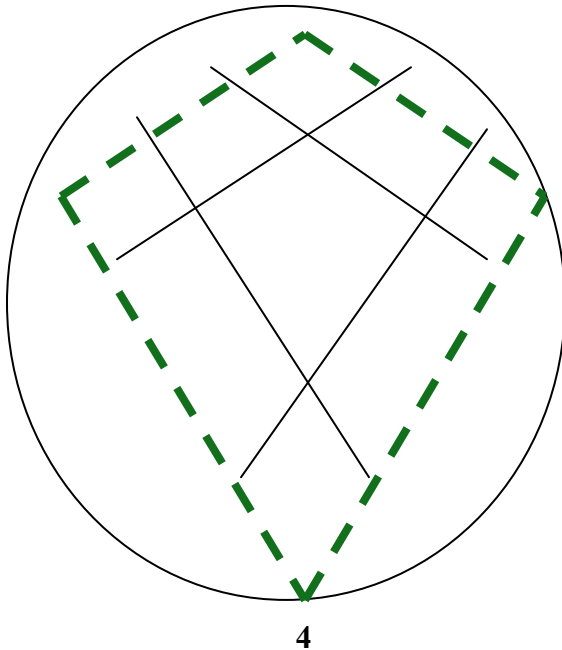


Illustration Key:

If 1 at the top, 2 on the right side, 3 on the left side and 4 at the bottom. The sequence is 1=natural law/ethics etc., 2=socio-legal approaches, 3=state law = positivism, and 4 international norms, human rights, new natural law.

Recent studies (Saavla, 2010) show indisputably that the nature of the Indian family is changing. Particularly with reference to marriage and women these studies suggest that the family is transforming itself from a unit of production to one of consumption. Further, that this transformation is being coerced towards nucleation instead of extension in order to cement the bond of family. The model in modern society of the family has changed, even evolved from the joint to the nuclear structural unit of families in most settings, urban or rural. These studies particularly of urban women conclude that an emerging secular, nuclear family unit, as opposed to the traditional sacred one, today provides the new model for future Indian families (D'Souza, 1970; Fonseca 1963, 1964, 1966; Kannan, 1961, 1963; Kapadia 1958; Kapur, 1970; Ross, 1961). Nonetheless, the social process as evidenced in both the rural and urban context in India demonstrates how tradition continues to coexist alongside modernity and its thrust of change, without conflict or contradiction. In fact change is itself constantly recast and understood in terms of tradition, often through recourse to text, whether through memory

or written remembrance. In spite of some evidence that there has been some change at certain levels of caste societies there is also evidence of strong resilience in traditional societal patterns, specifically in hierarchical layering of clans. Marriage and its related rituals and customs preclude drastic changes in the essential structure of society. Notably, in terms of idealised behaviour or *sadācāra*, in modern society the individual still accepts assigned role functions in the wider system of hierarchy and plays out his/ her obligations in keeping with the greater common good, as it is perceived to be. Individual goals remain consonant with the higher goals of the group, or the lineage: the continuity of the present with ancestors, and finally the group's code of conduct or *kul dharma*.

adāc āra therefore becomes almost a cog in the wheel of dharma; it keeps *kuldharma* alive and ever present. The practise of a custom outlawed by the state presents no conflict to those who continue to practise it. It has been over five decades since the DPA came into being, and so there is little point in arguing a lack of a wider knowledge of it. Enough protests in rural and urban settings have demonised dowry to inform possibly every section of Indian society. That dowry remains resilient speaks of something deeper. In the analysis of the ancient, medieval and modern material presented for discussion in this thesis it has been evident that dowry has as a matter of course in marriages been enjoined from the very first sketch of an imagined sacred union. Since that verse was composed some three thousand years ago, a certain prescribed and proscribed behaviour have followed in its lead, in commentaries, in retellings of myths that enjoin the importance of the duty of a father not just to his daughter as a prospective bride, but also to several (sometimes as many as fourteen) generations of his ancestors. All these stories, codes of clan-rank and clan-behaviour enjoin the behaviour that underlines the importance of marriage to Indian society past and present. Therefore, the appropriate rites and rituals being observed during and in the maintenance of Hindu marriages is crucial to consider, and dowry is tacked neatly into these rituals. It is demonstrably part of the very giving away of the girl, the worship of the groom by the father of the bride, in the gifts of wealth and payment of money as a *sulka* or tax during negotiations, engagement ceremonies, nuptials and in behaviour onwards to uphold the marriage.

That dowry is essentially 'good' is uncomfortable to observe, academically or otherwise. To add to the discomfort is my own experience as a researcher and an Indian, Bengali, Bombayite woman. At my own wedding I felt compelled to furnish my new

family with gifts that suitably represented the traditions and past of my natal family. Being fatherless I felt the need to fill the gap of my father's duties by taking them over myself, but without overtly admitting to this. My husband and I paid for and arranged our wedding, but my natal family took the credit. It had to be so. Why? I even stopped to consider the uproar it may cause if it were known that the youngest daughter of a family was effectively doing the men in the family out of their duty, and thereby angering several generations of ancestors, including my father. My insistence to supply 'quality' hand made items to adequately represent both our social standing and our cultural background to my family-to-be was misconstrued by many, and even joked about as I was an accomplished dowry academic. I was pressurised to formulate a list of gifts, to make copies and keep one with a responsible person in my natal family, "incase..."!

From my own experience then the knowledge and purview of the law is not absent. People know about the amendments; and "the letter of the law" even. But what was it that compelled me, an academic with wide knowledge of the elements of what constitutes dowry, to gift and bedeck myself suitably?

Answers are always hardest when they are about oneself, and particularly one's culture. Dowry is a determinant in Indian marriage. It has been and will continue to be. Intervention by the colonising, codifying and controlling efforts of the Raj, and now of the state have unsettled the balance of priorities in people's minds. Most parents pay lip-service to banning dowry from their lives, but practise it nonetheless. Dowry will not go away. We must therefore, turn to it, and set up future projects to analyse the good aspects of dowry and re-claim the law making process as an inverted pyramid; working from the people up, rather than the other way. Dowry is considered good behaviour in India, even today, even after it has been an outlaw for fifty years. It is an uncomfortable modernity; we are after all players in the international arena of trade and power. Dowry and its existence classifies us as socially perverse, and still backward. Dowry is loved, and affectionately protected as a possible protector of daughters. But we don't admit it. Case-law is rife with statements from grief-stricken families, especially fathers saying, "We thought if we gave more". Dowry is ensconced in the original model of marriage. Indian society needs to re-define marriage in a new mode, as a union between two individuals in a new society, but still upholding the very universe we inhabit. Until dowry is seen to underpin the upholding of that universe we cannot un-tack it, and should not. Even if we won't as a nation admit to it.

To reroute this discussion to the present let us consider the making of mindsets, which is what we are dealing with as the broader theme of this research. A government backed study, carried out by UNIFEM,³⁵⁷ UN Habitat, and *Jagori*, an NGO working in the field of education, health and women's welfare in Delhi,³⁵⁸ based on a survey of a sample of 5010 men and women during January-March 2010, found that 2 in every 3 women in the Indian capital city of New Delhi have faced some form of sexual harassment in the last year. This report entitled "Safe city free of violence for women and girls" succinctly endorses the conception of women by the male mindset and demonstrates the continuing struggle on a daily level for girls. If at ground level there is no respect for the physical safety of women to the extent this study suggests, then it goes to the very core of the society which breeds such a mindset. And customs, like behaviours that infringe on the human rights of women are rooted in and stem from a cultural attitude that is both deep and entrenched. There is an urgent need to address this mindset with a clarification, posed by research contained in this thesis, which points the lens inward, and does not aim to blame-shift to any external agencies. Much, therefore remains to be researched, and somehow done.

From a triangular tussle between traditional cultural texts, modern legal text and custom, custom emerges as most potent in people's daily lives. To return to our wider worldview of the universe as seen through an Indian lens everything is connected. The first photo plate that visually led into this thesis, with its emphasis on a circle of solidarity has in turn come full circle. We see, overleaf (photo plate 2, pp. 295), where the world has widened from ancient times. There is an airplane in the sky, and a motor car/bus on the street, alongside what could be Sūryā's bridal chariot. They all fit in to the microcosmic world of dharma, which remains linked to the wider world of *rta*. From our evidence dowry practice forges, and renews so many of these crucial links. It has not been legislated away from people's minds in the ideal marital context. We must therefore put modern dowry under the lens once more, contextualising it within the wider worldview of the people it matters to, in order to deal with its daily repercussions meaningfully.

³⁵⁷ UNIFEM is the UN development fund for women, and UN Habitat, is the UN human settlements programme.

³⁵⁸ As reported by the BBC on 9th July 2010; www.bbc.co.uk/news/10567761

Photo plate 2: Past and present “Cosmic and chaotic solidarity”



Chapter 8

The Postscript: Dowry exists

Dowry exists. The persistence of dowry as a problem is borne out by the most recent ruling in the well-known Nisha Sharma case in India. The erring in-laws have now been acquitted. The judge believes the ruse to call off the wedding by crying ‘dowry demand’ was a pre-planned hoax on the part of the bride. After being hailed as a heroine of sorts in the dowry debacle, Nisha now finds herself as much at fault as her mother-in-law who she accused of greed. (*Indian Express*, 1st March 2012). Similarly as reported on the BBC and covered in several dailies, Purnima Halder of West Bengal sold her three daughters aged nine, seven and three for less than the equivalent amount of £3 (*India Today*, 2nd September 2012). Though it is claimed she did this as she could not afford to feed them and was concerned for their wellbeing, it cannot be overlooked that one of the social workers handling the case admitted on national television that the mother of three daughters did this also with a view of not having to pay their dowry in the future. This is reminiscent of the mentality that spews marketing by-lines for female amniocentesis and other sex selection clinic advertising, which blatantly advocate “Pay Rs500 now, save Rs 5000 later” (Dowry Today).

Dowry remains persistently a problem. In fact, in spite of a deeply debated prohibitive statute, the DPA of 1961, dowry practice in India and across Indian communities continues virtually unchecked. This thesis asked why? The answer appears in the smoke trail of expectations surrounding the institution of Indian Hindu marriage, and even beyond it into Christian and Muslim, and even Buddhist marriages. The intent of this final concluding essay is to summarise the main core argument as set out in the main body of the thesis, and further to reiterate this with additional explanations highlighting the fatal auspiciousness linked to dowry behaviour within locally variant cultural contexts. A further intent of this final chapter is therefore to tie the loosely woven threads into a clearer, more tangible, neat research knot.

Dowry expectations, this thesis demonstrated (Chapter 5) are woven into the very fabric of the most highly emulated of all ancient marriage forms, the *Brahma* form as described by the cultural texts. That said, the myriad social practices concerning dowry and gift giving remain in existence; and are most prominent in the variation of their practise across the Indian subcontinent and now also in the Diaspora. This thesis was not

built on anthropological fieldwork and instead focused on the evident strength of the largely invisible links between ancient texts and daily practice, which may not on the part of participants, have anything to do with those ancient texts. But it appears that the basic models and patterns set by such traditions of gift giving and transfers of property on the occasion of marriage have deep social roots as well. The thesis thus argued that this apparently idealised and pure marriage form has actually been encoded as the official Hindu marriage enshrined by the positivist state law into the Hindu Marriage Act (HMA) (1955), which it is expected will be followed by all those marrying officially under Hindu rites.³⁵⁹ Weaving traditional norms into state legislative principles is not uncommon in the Indian context. Further, that those debating the then problematic trend of excessive gift giving also instituted a prohibitive statute DPA (1961) only six years after having outlined the popular trend for Hindu marriages also allowed the symbolic sum of Rs. 2000 (extortionate for some, paltry for many) speaks to the clear understanding that the statute was intended more as an educative tool, rather than a piece of applicable law-making. The DPA proves to be symbolic, even myopic legislation.³⁶⁰

In terms of dowry-related decision making, at ground level the colloquial Hindi term *rassam* or *reshum*, is critical to note as it is linked to a local belief in tradition. There is a clear directive that this comes from local, family based, community influenced behaviour patterns, in-scripted into society through repetition for a long period of time. Local custom and tradition in fact have much more bearing than becomes apparent from even a cursory reading of Hindu culture and society. In this sense, this concluding analysis will also note the relevance of *sadācāra* as *dharma* with a very small 'd'; as a source of ascertaining the 'right thing to do' when it concerns dowry-behaviour.

The core argument:

This thesis linked the ancient model for marriage laid out in RVX.85 to the modern vision enshrined in the HMA (1955) and commented on the similar trend that the official perception of 'tradition' is seen to take. That social practice may be something quite different was made clear throughout the thesis. The thesis commented further on the role

³⁵⁹ Under the provision of the Special Marriage Act [1954] all persons of Indian descent (almost) need to marry under the blessing as it were of this act. In reality much fewer marriages end up being officially registered.

³⁶⁰ See below the discussion on the importance of the four-fold path to dharma for more detail on this aspect of the prohibitive law.

of importance laid on following positivist notions of book law, but also examined the idea that these books have at least partly been created by tradition in themselves. Therefore, the crux of the thesis highlighted that dowry as a part of Indian Hindu marriage has always existed, and that it grew and evolved, as did society around it. Conspicuous consumption and middle class morality today (Saavala, 2010) are not enough to explain away the depth to which dowry is embedded within the traditional practices of many disparate and similar communities across India and in ex-patriate Indian communities. Therefore, dowry according to this thesis and demonstrably from social examples cannot be easily extricated, let alone expunged by legislative fiat, from Indian marriage or society. Dowry therefore refuses to be made illegitimate. The primary reason for this is manifestly the strong link of dowry with auspiciousness and gift giving, which is considered highly powerful in relation to clan rank transformation and maintenance, in the garb of hypergamy (Chapter 4). So, dowry is veritably written into South Asian societies and also into the very fabric of the statute that claims to ban it. It is clearly present within ancient norms of marriage and is evident in medieval and finally in modern marriage practice. To whatever extent, a girl is rarely married without the expectation, and the giving of traditionally acceptable gifts.

Highlighting these trends the research here clearly points out, without turning into a predominantly law-centred thesis, that banning dowry has in the main been a myopic failure on the part of the modern Indian administration. Dowry is a classic interdisciplinary Area Studies phenomenon, which cannot be studied in a mono-dimensional way. The unsatisfactory development of Indian legal studies, however, has prevented proper analysis of such issues and has led to propagandistic handling of the theme by many participants, some of whom (most evidently Madhu Kishwar in 1989) have come to realise that banning dowry outright is not the way forward, anyway. There needs to be a fresh approach, both academically and legislatively, which will take into account the auspiciousness of the gift of a girl and what should clearly be construed as her part in the wealth accompanying her into the new marital home.

This thesis states what practice at ground level confirms, namely that the prohibitive dowry statute of 1961 (amended in the 1980s) is mere symbolic legislation. The only academic study (Oldenburg, 2002), linking traditional and modern forms of dowry practice, was released over a decade ago. My thesis suggests, not quite for the first time and as Derrett (1984) and Dumont (1954) prophesied, dowry is very much part of

the cultural textual tradition of India and South Asia and has been so from its earliest inception. Prof. Witzel's (1995) claim of "little dowry and no sati" in the Vedic context was taken up and considered through my unpublished Masters work (1999) and it is confirmed here that dowry has clear Rgvedic roots. Clearly therefore, dowry as a customary marriage practice needs urgent re-examination, both through tradition and in the form of text because it will not be made illegitimate.

The primary analytical aim of this thesis was to examine the historical articulation between traditional cultural texts and modern statutory law (also a form of text) indicating the crucial relevance of dowry as a customary practice to Indian marriage past and present. Concerned with the inscription in society and law of a particularistic notion and set of practices comprising dowry deemed 'right' and desirable good custom or *sadācāra* (good social norm). The central focus here is that dowry is and has been and continues to be a socially sanctioned, and for those who can afford it, necessary part of Hindu even Indian marriage. Glenn (2004: 298) characterises the situation aptly when he notes that the notion of law which did not appear to be contained in the books or verses of the Vedas needed to be gleaned "from somewhere", he therefore rightly assumes that: "Local tradition, of the virtuous," or *sadācāra*, is where he suggests one may find this.

Tradition, I argued, is to some extent text; maybe oral/ non-textual but nonetheless a script. Therefore, the notion of an inscription in society of given behaviours during the acting out of the give and take of dowry is almost inscribed onto the community enacting the dowry based on their collective memory of the behaviour in similar circumstances of their family or peers in the past and present. I argue, within the main body of this thesis that texts can to some extent be seen as compilations of idealised traditions. In tackling dowry the initial difficulty is that this custom is never clearly named in the traditional cultural texts. I sought therefore, expectations within the literature, which give away the socio-cultural reality of dowry at much earlier stages of the literature than most academic research so far has suggested and admitted. The intent of this thesis and its conceptual pull has been to redress this lacuna by creating a convivial conceptual link between modern, medieval and ancient marriage practices that formulate and embed dowry behaviour and practice within Indian society past and present. Mine is neither a legal nor an economic thesis, but it operates within the area of lawmaking to understand an economically charged custom. In the course of this chapter

the troublesome-ness of terminologies will be taken up and discussed, as is relevant to the charting of the essential core arguments contained here.

8.1 Fatal auspiciousness

In discussing dowry in text and context (chapter 4), this thesis has already analysed literature on Indian kinship and family (Marriot, 1955; Hutton, 1961; Karve, 1965; Dumont, 1966; Tambiah, 1973; Inden, 1976; Madan, 1975, 1987, 1989; Raheja, 1988; Fruzzetti, 1990; Saavala, 2010). Further, this thesis highlighted Rajaram's (1983) capital theory when considering the making of new marital ties in terms of kinship hierarchy, thereby attempting to define dowry in sociological terms (Dumont, 1962; Karve, 1965; Raheja, 1988). Srinivas (1984:17) believes this theory, however, to be misleading.³⁶¹

That dowry is the sum of gifts and prestations, linked to the formulation of a marriage between two people, two families, and finally two communities, tends to be central to most Indian marriages, whether Hindu or not. That this gifting behaviour continues into the wider married life of the couple, beyond the rites associated with and surrounding the wedding itself, and this is always plural, has been clearly demonstrated within the main text of the thesis (see Chapter 4). In examining the link of hypergamy to dowry marriages the auspiciousness and purity associated with the giving of gold was carefully outlined, particularly with reference to Gonda's (1991: 6-8, 88-89) discovery of the need to conspicuously spend and lavish gold in relation to marriage, and before and after. The crucial impact of the different degrees of hypergamy, following Blunt's (1931:70) analysis among modern sociologists, Tambiah (1973: 64) finds it ideologically critical to the conception of marriage. This is particularly so when considering the symbolic *kanyadān* as he believes this status superiority is inherent in the gift of the dowry accompanying the gift of the girl. What becomes the fatal aspect of this auspiciousness is when the girl is perceived as merely a carrier of the gift of gold, or cash etc. in modern contexts, and not as the one who inherently possesses or carries over the auspiciousness in the body of her person. For a much more detailed discussion on the degrees of difference in the various regions of India, see section 4.3 above. What is considered *dān* or auspicious charity by the father of the bride (or indeed whoever is doing the *kanyadān*), unfortunately proves to be the starting point for more monetary

³⁶¹ For more expansive discussion on Srinivas' viewpoint see section 4.1 above, dealing with the problem of defining dowry accurately.

demands, sometimes resulting in what we refer to as ‘dowry death’. What requires further comment is the auspiciousness associated with the act of giving the dowry, the auspicious nature of the gifts themselves, and the intensely feminine energy powerfully linked to both to the transaction itself and the girl who is seen to carry the gifts across the threshold into the new household she and her husband are about to set up (see chapter 3 and chapter 4 above).

Much has been made of the auspiciousness linked to connections created through marriage (Hutton, 1961; Dumont, 1966: 116-119; Inden, 1976; Raheja, 1988). In this thesis the importance and significance attached to gold as a material of exchange and power, and its crucial link to the ancient *Brahma* form of marriage have already been pointed out above (chapter 5). In fact Gonda (1977: 606) goes so far as to say that gold was seen as integral to this emulated marriage form, and is clearly attested in the ritual *sutras*. Of course, for common people who cannot afford gold, or may not value it as such, other forms of metal will have to do. One could write a whole thesis just on that theme and the potential implications for social relations of this subject. Uma Gupta (1987: 41) also makes the link of materialism to the mythology of the Vedas.³⁶² Dowry, as mentioned above, in section 4.3 goes into much further detail on the nature of hypergamy and its relevance to dowry than we can afford here. Therefore the discussion here with relation to hypergamy will remain brief. Hypergamy is clearly seen to go towards the creation and maintenance of rank beyond the purely natural act of setting up a marriage which by definition sets up a network of auspicious relationships. As mentioned, the crux of this thesis included at its core the notion, simplistically, of trading wealth for status. In terms of auspiciousness this wealth is never considered as a blatantly bartering means of material transaction (Inden, 1976; Fruzetti, 1990). It is always interlinked with the notion of auspiciousness in terms of *izzat* or honour, as discussed in 4.4 above, when dealing with the concept of women as valuable assets exchanging position from natal to affinal family units.

As noted above in chapter 4, Dumont (1966: 282) highlights the importance of the “meritoriousness” of the marriage in terms of prestige, primarily achieved in conditions where no payment is received for the girl (*sampradān*) who is considered the complete

³⁶² Gupta is not the first to examine and analyse Vedic mythology in terms of a preoccupation with materialism and amassing wealth through ritual, clear arguments in this regard were previously presented by Edwards (1924) *The Philosophy of Religion* also noteworthy is Huxley’s (1957) *Religion without Revelation*. But see also Shastri (1957), Lefever (1935).

gift. This emphasis on hypergamy as the model for the most auspicious of marriages is crucially noted by ethnographers and anthropologists whether they are dealing with communities as far north in Kashmir (Madan, 1975) or at the opposite end of the country in Kerala (Vishwanathan, 1993), Bengal (Inden, 1976; Fruzzetti, 1993) or rural north India (Raheja, 1994) or Punjab (Oldenburg, 2003). Interestingly the case of this preoccupation with hypergamy seems relevant to studies in early nineteenth century Indian communities (Risley, 1891; Rivers, 1921) as it is today (Saavala, 2010). Which is why, throughout the cultural and even modern literature the writers will balk at the notion of marriage as a form of buying and selling children. Rather, what is conceived to be at play within the auspicious context of marriage negotiations, the marriage itself, and then at rites seen to further uphold and strengthen the initial ties established through marriage, the gift of dowry is its direct link to prestige. Inden (1976) makes much of the peculiarity of hypergamy in terms of prestige with reference to Bengali marriage negotiations and transactions linked to the give and take seen to effect and thereby affect the nature of the marriage itself. Rivers, (1921: 12) before Inden also pointed out the link of rank and ritual directly linked to gifts being given during this auspicious time.

In terms of auspiciousness the *muhurat*, or auspicious hour in the ancient period and still in use, lunar calendars continue to have an important part to play. As is discussed elsewhere (Vishwanathan, 1993: 103-105) auspiciousness is courted by the couple and their families in the initial setting of not only the date but also the precise time at which the knot should literally be tied. Although discussing the marriage arrangements of Keralite Christians Vishwanathan (1993) recognises the underlying influences of the more ancient traditional perhaps Hindu practices which modern day Christian converts act out oddly consonant with traditional rites. These bear resemblance to the behaviour during negotiations of ancient, medieval and even modern couples across India. However plural and locally variant these norms continue to be, it is hard to ignore the similarity of the presence and importance of rules governed by a hypergamous dominant culture. Raheja's (1988: 120) observation during her rigorous study of marriage prestations among the Pahansu people in rural north India is worth discussing here.³⁶³ Her study demonstrably proves, while also unpicking Tambiah's preoccupation with dowry as pre-

³⁶³ See in detail chapter 4, particularly section 4.3 and the discussion on trading wealth for prestige and status. The plural nature of these practices is also overtly noted in the latter, and must be respected within the context of these discussions at all times.

mortem inheritance, that the ethos of hypergamy appears distinct from the emblematic *kanyadān* principle in wider India, but that crucially the evidence in terms of ritual and linguistic data gathered in relation to these prestations clearly represents dowry as a total phenomenon. As a matter of fact there is evidence to suggest that acts of giving and receiving carry clear messages, coded within the very act of the custom they denote. Moreover, power equations are set and controlled between kin-groups and this is what foretells the future for the survival of dowry as a practice. The theory of gift-giving particularly relevant here considers Mauss's (1990) conceptual examination of marriage prestations.³⁶⁴

In terms of a medieval model marriage the *Mahābhārata* is replete with references as discussed in chapter 2. What is necessary to note here is the importance in terms of religious and spiritual leverage accorded to this text. Sullivan (1994: 377-401) comments that in the Hindu tradition religious authority is often personal, embodied in the figure of the *guru*. Vyasa in fact is believed to stand at the head of the *guru parampara* or teacher tradition as the originator and authenticator of all important teaching. And therefore Vyasa's authorship serves to validate the *Mahābhārata* and its claim as the fifth Veda, which in turn reinforces this epic text with supreme religious leverage. Further, Lipner (1994: 74-85) argues the nature of the epic verses made them easier to remember and therefore simpler to disseminate at a later period through memory and recitation. Therefore, the epic has also social leverage, for an elite whose intent is to incorporate, even infect a wider society with their own ideals.³⁶⁵ Sanskritization (Srinivas, 1984) once more (discussed in further detail below).

My own marriage had to be conducted at precisely 8.59 pm on 14th August 2002. My father's eldest cousin, who still lives in our ancestral home where the verses of the *Rgveda* are held for protection, dictated both time and date. In the absence of my father it

³⁶⁴ Marcel Mauss's study although released in French between 1923-4, became more widely translated and available to academics and others in 1950. Therefore, in reference to the conceptual idea this date is used in the thesis. In the discussion of gift theory in this thesis two versions, or translations of Mauss are used. The more widely accepted of these two for social scientists is by Ian Cunnison (1970). However a more recent reading is relevant for a much changed world. Interestingly the very title is translated variously. Halls' (1990) version uses the phrase "form and reason for exchange" as opposed to the previous translation "form and function". This represents the shift in focus of our society from a more functional to one that attempts explanations, perhaps?

³⁶⁵ See Lipner (1994: 25-165) for an explanation of how "the Veda" functions as "scripture" and notably for the present purpose for the relevance of caste and narrative (108-145), also a discussion on the part folklore plays in the wider social network in India in the context of the growth of intellectual power of an entire group (146-164).

fell to him to ordain these details. I needed to travel by the end of September to begin this PhD thesis and we thought it appropriate to marry (after a courtship of thirteen odd years) before I committed myself to this arduous project. The timing was all wrong, we were told. August for instance is not a month appropriate for making marriages. December and January tend to be more auspicious. But after deep consultation with the planetary configuration, our individual and collective birth and life charts astrologically, an appropriate date and time were found. So many other factors dictate this sort of arrangement, and clearly cannot be detailed here. For reasons of brevity, however, the fact that ours was a love³⁶⁶ match and not arranged primarily by our elders or peers made the negotiation much simpler. Even so, the underlying influence of the power struggle between groom-givers and bride-bearers floated to the surface. In spite of the technical anomaly that my partner and I were organising every last detail, and spending our own savings to make our marriage a reality, the overbearing burden of appropriate behaviour had to be maintained in order to achieve a harmonic linking of two families.

The difference in auspiciousness featuring in love matches, or arranged marriages has been examined by Osella (1998; 2000) and Vishwanathan (2001) and Saavala (2010). It cannot be gone into at any length in this concluding exposition; however it is crucial to note that the presence of love in the mix of marriage is not always a staying hand on those that have the intent to demand a dowry. Saavala (2010: 52-57) discusses how the intervention of love in the marriage model can play havoc with the more serenely perceived Sanskritic ideal model of *kanyadān* as discussed above. In hierarchical terms, the prestigious ideal of the ancient *Brahma* form of marriage where the bride-bearers are meant to be the sole givers, “giving the gift of the virgin and dowry as well as being an eternal source of gifts later on while denying any reciprocal flow” (Saavala, 2010: 54) of wealth has to be followed in order to achieve the correct status for a family. Love marriages veritably transform the gift-giving model by putting it on its head, making it appear instead like the opposite model of gift exchange, namely bridewealth. Saavala (2010: 54) makes the further observation that;

³⁶⁶ Although the proportion of love marriages and free-choice marriages in India is growing, the trend leans in favour of arranged-cum-love marriages. An interesting study highlighting the ‘doomed’ nature of young romances outside the purview of parental control worth mention here is Osella and Osella (1998), who found that often young couples who had established or entered into romantic affairs commonly expressed the “hopelessness” of their situation.

...in some cases of love marriage, the boy's side might give to the girls' side thereby inverting the hierarchical model in which the girl's side is eternally "below" the receivers of the gifts. For example, a young man received a car as a gift from his sister's fiancé before the wedding. Evidently he felt embarrassed by the fact and when I asked about the origins of the vehicle, he explained that the gift was from his sister. This kind of more reciprocal exchange in marriage transactions leads to a new constellation that could possibly shake the established hierarchical and hypergamous model of dowry and arranged marriage.

However, as much as one would weigh in favour of the reverence of reciprocity in marriage making and related transactions the embedded behaviour which accompanies such marriages highlights the long and narrow road that must yet be traversed in order for some change for the better to be meaningfully achieved. In the meantime, the social fact remains that arranged marriage is the high-status norm (Saavala, 2010: 46) and this is emulated by wider society. In the absence of reliable statistics to account for the proportion of free-choice or love marriages, it is probably safe to state that the majority of marriages in India continue to be matches made by parents, or their peers. The most prevalent model for romance in marriage of course is provided by the 1000 films a year market of Bollywood, which cannot be underestimated. Here, too, the dowry model is subtly, and at times not so subtly, replicated.³⁶⁷

Most of the behaviour here documented is underwritten by a conscious perception of dowry marriage as the ideal model, both in the mindsets of groom givers and bride bearers. For instance, the gift of dowry willingly given is often seen as showering affection on one's daughter. Saavala (2010: 54) notes the case of a mother of three girls, where this mindset of *having* to give something to secure a good future of the girl becomes apparent. This rationale is by no means limited to the few, as Saavala (2010: 54) notes "Some people want to take [dowry], some people don't take dowry. We give as much as we possibly can. Whatever we have we give, beyond our means we can't give. We want our daughter to be in a nice family background, so we have to give something." And as Saavala (2010: 54) goes on to note, this peculiar rationale common among upwardly mobile middle-class families in any Indian Hindu family "if they can afford to pay dowry, they think it will secure a desirable match for their daughter and reduce the possibility of her suffering in the affinal home. In most middle-class peoples' thinking,

³⁶⁷ See *Ye Aag kab Bujhegi* (1991) as one example of dowry related troubles being reflected in popular Hindu cinema. More recent references in popular culture are abundant of course.

sending your daughter to her husband's family without money gold and gifts would be asking for trouble" [emphasis added]. "'Giving' confers power on the giver; 'receiving' is a sometimes shameful act that can put the receiver in the power of the giver". This aspect of a complex power equation linked to the giving and receiving of dowry has been clearly tackled in Chapter 4 and is briefly addressed below.

I have, among friends and people I know, come across cases where love marriages have turned into difficult divorce settlements somehow toppled by demonised versions of undercurrent dowry harassment. An unsatisfied set of in-laws may harangue a young bride saying "If he had married someone we chose she would have brought so much wealth. But you married for love like in Hindi films, it is very modern, but not always the best for everyone". Similarly Saavala (2010) finds in Andhra Pradesh cross-cousin marriages where love may be a factor in choosing a certain bride, but then coming in for surreptitious slandering. Although cross-cousin marriages were traditionally the acceptable even desirable norm in Hindu South India, this is somewhat altered today. One case noted by Saavala is worth repeating here, a young bride domiciled in her husband's joint family home with two little children sharing the space with her husband's siblings and their nuclear families, and therefore dependent on the parents-in-law had to suffer for not having brought any dowry. "She explained...her parents-in-law kept reminding her that other brides would have brought with them Rs. 4 lakhs while she brought none." This was used as a bargaining tool to force housework and cooking on her although other daughters-in-law could just as easily have pitched in. She was contemplating returning to her natal home. But separation and divorce, though in contemporary times offer an option, are certainly not the preferred choice of lifestyle, either for the woman or to impose on children of a difficult, dowry drained marriage. What this case clearly confirms is that dowry adds to a woman's status and bargaining power in the family. Clearly, a woman who brings a lot of property, in whatever form, into her new marital home, will have a different status than one who came with less. The situation persists in overseas communities within the diaspora as well. For instance the specific case of suffering caused within a single family, between two sisters and their father in the British Sikh community (Jhutti, 1998: 192).³⁶⁸

³⁶⁸ Such scenarios are not unique to the British Sikh community but are more widespread, and as yet unresearched.

Further, though, love marriage offers parents with limited means an escape however discreditable from at least initial dowry demands. But, as Saavala notes there are cases where even in love matches demands may surface after a marriage has taken place (2010: 53). Then there are the cases of highly educated women who will save up and pay either the entirety or contribute to the paying of the dowry or marriage expenses. All in all, this most recent discussion on middle-class India demonstrates that the ideal of marriage arranged by the wider kin group persists (Saavala, 2010: 48-49). In the case of Lalita who saved up from her own earnings, the parents were looked down upon by the wider group. In Lalita's own words the older relatives disapprove of parents who were "making their daughters work for themselves" because it is clearly seen as the parents' duty to provide the accompanying gift of a dowry to make the 'gift of a virgin' more acceptable to the affinal family (Saavala, 2010: 41-42). This notion clearly attests the findings within the thesis here that these pressures of peer perception indicate what appropriate behaviour is in making marriage matches, negotiations and choices. Clearly then, *sadācāra* is at play here. The cognitive value linked to this sort of collective conscience shared by an entire community cannot be underplayed. When, as these days, education takes longer, demands for dowries may be exorbitant and a suitable match becomes harder to find. This may of course be linked to assumptions that such older girls are difficult to live with and dowry may here be seen as additional costs imposed because of certain perceived or actual negative characteristics of the bride, age being only one of them. Such more recent trends point to a new model of behaviour at play in the modern Indian middle classes, which is worth discussing here in brief.

Now, Varma (1994) observes that the relatively new and clearly upwardly mobile middle class are not depicted in a favourable light, as a socially responsible class aware of the needs of a developing society around them.³⁶⁹ Instead they seem to constitute a social strata selfishly motivated by their own preoccupations in terms of displays of conspicuous consumption and status-driven consumerism. Those identified as belonging to the modern Indian middle class do not necessarily form a 'class for itself', as a socially cohesive stratum aware of its shared economic and societal interests. Gupta (2000) finds,

³⁶⁹ The part played by the daily praxis of middle class groups in various other parts of Asia was scrutinised with due attention paid to the transformative role of social behaviour (See, Osella and Osella (2000), Liechty (2003) among others. What Saavala's (2010) study does is synthesises the socio-cultural processes at play in Indian and Asian middle class groups by exploring how these are inter-related, and how they reflect cultural specificity.

clearly from his moral high ground, that regrettably though this relatively new social class is westernised, it is a skin-deep plastic mentality with no added conceptions of equal rights or a true understanding of liberal democracy. However uncomfortable this viewpoint is, it is crucial to consider that it is against this backdrop that much of the problem relating to dowry behaviour is acted out. And, by middle class people who believe themselves to have achieved the cornerstones of western society in every sense, but still remain akin to a cultural specificity much entrenched in a deep traditionality. It is this complex hypocrisy that adds to and largely constitutes the depth of the dowry problem.

Bourdieu's (1984) classification of French society may be seen as derivative to the nature of the modern middle class in India today, and is in contrast to Liechty's (2003) production-related classification.³⁷⁰ In terms of a significantly more relevant casting of class overtly as a culturally influenced social process, this thesis understood the importance of relating the morality of a small group to suit the majority of those who practise dowry behaviour. In this sense the study here re-invents the position of a class or even a caste struggle based on Bourdieu's more or less symbolic and somewhat status-guided formations. Class-struggle in a Marxist sense may appear an out-moded strategy for a community to busy itself with, in an attempt to gain and barter for better rank, but in Indian terms it is relevant here. As discussed at length in chapter 4 above, this sort of tug-of-war between classes continues at ground level, and the status-guided position seeking negotiated constantly during marriage match-making fits here. Of particular concern here is the central feature of belonging to the middle-class in the ongoing classification struggle (Bourdieu, 1984): specifically how to restrict entry to others from the lower strata into the higher one, and crucially how to gain acceptance by one's status equals and superiors (Saavala, 2010: 12).³⁷¹ This is relevant in terms of dowry behaviour in particular. Another typical feature of middle class morality noteworthy here is the high moral value attached to monetary means, to practise morally higher standards, which links in also with modern day dowry-related behaviour.

³⁷⁰ Liechty (2003) has conducted a similar study in relation to social classes in Kathmandu, Nepal, who also follow similarly hierarchised status game play in the Hindu sense.

³⁷¹ South Asian middle class behaviour and classification has gained growing scholarly interest, Liechty (2003). On Indian middle classes noteworthy among others are the work Osella and Osella (2000), and of Saavala (2001; 2003; 2010)

Increasingly the new middle-class in India express their role in society as ‘being modern’ not as a reflection of being westernised but being indigenous. Margit van Wessel (2001) shows in her ethnography that this new group in discussing modernity and its morality consider it very much indigenous to their lives.³⁷² Osella and Osella (2000) in their observation of an upwardly mobile lower caste in Kerala found a similar pattern of behaviour and thought.

This brings us to the following discussion on how one can overlay ancient and medieval thought processes onto a modern marriage market without creating great discomfort among modern-day lawmakers, feminists and interpreters of anthropological pasts. In search of a more comfortable and proud modernity, modern dowry, and related death rates clearly represent a threat to the pre-occupation with the golden age ideologue of the Hindu Right. There has been an insistence on recasting the past, to make modernity more acceptable than the westernised models left behind by colonial lawmaking administrators.

8.2 Dowry as *dharma* with a very small ‘d’ or *sadācāra*

One of the primary purposes of this final chapter is to clarify, explain and further analyse the concept of *sadācāra*, which is central to the main body of my thesis. By further assessing the role and nature of the terminology and usage associated with dowry-related behaviour, it will become clearer how and why the very term *sadācāra* may be crucial to a better understanding of the background within which dowry as a social custom operates. That there are other possible terms for ‘custom’ in various parts of India is readily accepted, but the thesis did not venture to explore all the different typologies and their connotations. Focusing on *sadācāra* did not mean to suggest that it is the only such term in the field, nor to assert that it alone links to textual tradition. But because the term itself is mentioned in the ancient sastric texts, it somewhat stands out as a linking agent between textual tradition and societal practices and patterns of various kinds (Glenn, 2000; Menski, 2003). Searching for meanings involves sifting interpretations from both legal and cultural texts, and will be kept brief. All of this will further highlight the undeniable position of the current Indian law relating to dowry as *sadācāra*, in opposition to the DPA as a symbolic legislation.

³⁷² As cited in Saavala (2010: 202).

The multi-disciplinary nature of this thesis calls for a brief preamble, and hopefully will guard against a backlash from purists in a pluralist contemporary context. Derrett (1976) called for collaboration between anthropologists and lawyers because anthropologists are concerned with what actually goes on in people's minds and not with lawyer's idealised versions of law. Japanese jurist Masaji Chiba (1986) insists that as a result of new approaches concerning the study of law it becomes clear that law is so "inseparably" rooted in society so as to be unpicked using sociological tools and methodology. Neil Whitehead (1995) highlights that "limited historiographical scholarship tends to underpin the literary analysis of ethnographic texts leading to an inadequate anthropological appreciation". While Sally Falk Moore (1979) discusses the need for comparative classification: "The 'culturalists' highlight the specific nature of a society's value system; the structuralists try to sift an underlying order within cultural variability" (see chapter 2 for an extended discussion). Then, Koch (1969) emphasises the need to ascertain categories by which the people being studied structure their ideas of wrongs. So it is with the essential understanding of dowry as practised at ground level as *sadācāra* or *dharma* with a very small 'd'. In light of all of the above assertions therefore we arrive at the succinct conclusion that law must be recognised as an aspect of the total culture of a people, and is therefore subject to anthropological techniques of analysis.

The challenge is to represent ancient and however vague perceptions of the need for giving some kind of 'dowry' in the language of today's scholarship without running into the firing line of human rights activism that sees all forms of dowry as evidence of the systematic suppression of women's rights. Hence I argued that there is 'bad' (the extortionate version) dowry and 'good' dowry, but that under the notion of a collective social consciousness at local level all dowry-behaviour is essentially considered 'right' therefore 'good'. Therefore in textual terms, as reflected in the notion of *sadācāra*, giving dowry is good. It is even considered *dharma* with a very small 'd'. It begets, or should beget a good marriage, and secure a good daughter's good future in a good household. The emphatic belief is of course on the 'goodness' of all the behaviour linked to dowry giving and taking at the auspicious time of negotiating and then completing the transaction of a Hindu marriage. That these are ideals and not merely normative statements should be obvious. However, then the state goes and outlaws it, reconstructing modern dowry as 'bad' and therefore we have a sociological and an ideological dilemma.

The intervention of normative positioning creates a conflict where none existed before. The DPA of 1961 does not in fact decree that no dowry whatsoever should be given or taken, but it seeks to curtail exploitative practices. *Sadācāra* as a term that recurs throughout the early and later dharmic literature appears to reference a much more specific set of cultural norms, dependent usually on the community in question when a traditional practice is called into question. For instance, my cousin would like to marry a certain boy. Her parents have not yet met him. They ask about his family, first of all, then his earning capacity, lastly his character. What governs this list of queries in the minds of parents? Who has the final say on what is 'right', 'good' or 'valid' behaviour in all the surrounding negotiations that interplay in order for a couple to be betrothed, and then to form that extraordinarily important unit of human society, the householders? If one turns to the ancient, medieval or even modern texts then it seems one must take cue from the superior most, for instance the Indian Constitution or cases of the Supreme Court of India, or the old handbooks of the pundits, depending on which the particular pundit, or the community or family give preference to. In actual practices, however, none of this happens. Most people do not own a copy of the Constitution, nor would they refer to it in negotiating a marriage. While most people are aware of the existence of a powerful Supreme Court, they do not read its decisions in the form of reported judgments unless in some rare cases newspapers pick up this material and publicise it. As elsewhere in the practical application of the law, the time for recourse to law is usually when something goes wrong. But what when most things go right?

So, my cousin first consults me, do I think her mother would approve of this boy? She is a Bengali Brahmin, he is half German. We're talking on the phone, at different corners of the UK, but being governed by the guiding principles of good behaviour for well-brought up Bengali Brahmin girls. First, I think, has any girl in our vast family married outside the Bengali fold? I have. I married a Muslim. But this now is a white boy, half English and half German. Does he even know about dowry? Suddenly I feel my sole knowledge of my family's marital alliance making is far too limited to offer my cousin sound and suitable advice. So, what should my next port of call be?

It is this precise negotiation between oneself (*ā āna*) and the world at large, traversed carefully by first accessing information and advice through one's immediate peer group, whether that be family or familiars that gives us the first glimpse of how decision making at ground level is arrived at. Now, whether this could be used by

academically minded researchers as an example of how negotiations and gathering know-how is carried out in real world scenarios relating to marriage and dowry discussions is a belief we must suspend ourselves to accept. If dowry as mentioned does not overtly appear to be mentioned in textual material, but has acceptably become a social irritant, enough to be legislated against, then how and in what circumstances does that dowry discussion take place? There is ample evidence to gather an understanding of how dowry links in with other marriage discussions. We are aware in the Hindu jurisprudence sense that decision making is carried out through a four stage method. This four fold path is elaborated on further in the following section below. But whether the highest form of text, namely the ancient Sanskrit verses contained in the Vedas is ever accessed directly or not, there is a clear understanding that in most human interaction we arrive at an acceptance of what is the right thing to do, in the right context, by negotiating it first with oneself, and then with the relevant peer group. Individuals weigh pros and cons in the light of their own experience and other people's guidance. However, the floating notions of *sadācāra*, as *dharma* with a very small 'd' are not entirely irrelevant, just as the grand words and guarantees of the Indian Constitution and the judicial statements from the top court of the country are not entirely disconnected from the social field.

In terms of dowry-related decision making, however, we have a clear directive that this comes from local, family based, community influenced behaviour patterns, inscribed into society through repetition for a long period of time. Local custom and tradition in fact have much more bearing than becomes apparent from a cursory reading of Hindu culture and society. The term pluralism sits perfectly with an understanding of how custom in fact operates in the dictating of dowry behaviour. Quite clearly, in spite of local colour and the homogenising emphasis of modern Hindu law, in its state avatar the importance of local influence in terms of customary traditional behaviour and practice are crucial and necessary to the acting out of community led weddings.

As elsewhere in the world, (Rheubottom, 1980) the nitty-gritty as it were of how a marriage party must be organised, who will receive the groom as the main reception party, what this implies in terms of status for the other side all remain open to situation-specific negotiations. All these issues rest solely in the realm of customary notions of what is right and proper, however. But, importantly, what has an impact on that which is deemed right and proper behaviour for the wider group to follow, because it has possibly been in practice for a long period of time, which earlier used to be time immemorial for

legal purposes. These ideas are in an Indian Hindu context believed to be held in codified form within the older literature. This is why the collection of Vedic texts as academics might call them, may sometimes be consulted in Indian homes, by those who hold these ideas to be important and crucial. However, this is rare. The ‘texts’ are collectively called *sanskriti*, or *samskara*, or *riti-riwaj*, or *resham-riwaj*. These terms may be interchangeably used at ground level. As will be discussed below, the trouble with terminologies when dealing with Indian communities is that they are severally defined by the specific community in question. This therefore has a direct bearing on what is considered right and proper by a group, and evidently another separate thesis could be written on those distinctions in their specific cultural contexts.

But in an academic dissertation, like the present work, how does one qualify a term to fit varying, often disparate yet similar behaviour, which seen through a research lens shows evidence of a pattern emergent over a vast period of time if one wants to focus on the link, however intangible, of older and newer forms of text? That dowry exists there is no dispute. That all across India it has been problematic enough to occupy the judiciary and the social justice network and intelligentsia is not in question, either. There has however, precisely in the cultural texts themselves, been no one term for dowry in history, neither is there one Sanskrit term for it as an echo in all those languages that have sprung from Sanskrit as the parent. In search for the “*len-den*”, or taking and giving,³⁷³ my research has turned up a smoke trail of expectations layered across the literature and various regional manifestations of dowry practices. So there is a consonance, no real term for dowry in the texts, no really uniform and simple identifiable term for dowry in local usage. It is called severally, (chapter 4 for more detail on regional terminology) *hunda* in Maharastra, and *daaj* (from the Rajasthani root) also heard in Punjabi culture, *dahej* in some northern communities, *tattva* or *totto* in Bengal, *jahej* elsewhere. And yet the behaviour or as in the Bengali community the *niyom* or *niyam* or norm that accompanies dowry linked behaviour is curiously similar if not the same. And in particular, the wretched outcome of a burned bride is uncomfortably uniform in dowry demands gone badly wrong. (For a fuller discussion on these terms, see 4.1 above)

³⁷³ Notably here in the Hindi term *lena* or ‘taking’ appears before ‘dena’ which is to give. Whether this is merely a linguistic characterization because it sounds better, or whether it emphasizes the role of the one who takes as being more somehow better, or more superior in respect of the one who gives. As this thesis has outlined, the gift giver is usually at the lower end of the social status scale.

In wider, perhaps even Western terms, the term ‘right and proper’ has come to gain a legal tonality to it. In a similar vein, in an Indian context a similar term would perhaps be *dharma*, or in usage *dharmic*. However, in daily usage *dharma* even in an Indian context is linked much more to legality or spiritually linked action/ behaviour and in this context the more general term *ācāra* has been used and identified as an important concept in the work by Donald Davis Jr. (2010). In order to encapsulate the several, variant, pluralistic layered community local behaviour the term *sadācāra*, with the added element that this *ācāra* is ‘good’ and somewhat in accordance with ‘truth’, stands as an academic equivalent. In a country that has never had a single language to share, before British historical intervention, no single term means one single thing ever. It is always a shade of something, or as Menski (2011) now calls it, a ‘plurality of pluralities’. Similarly, as a researcher attempting to garner a code of practised behaviour under an explanatory label like *sadācāra*, for purposes of academic discussion and comprehension using an older Indian legally recognised term seems less objectionable than creating or inventing a newer modern term which will be loaded with unnecessary baggage, Western or otherwise.

Noteworthy here is Saavala’s (2010: 164-167) observation on the religious zeal and the ritual peculiarities of the new middle class in India with specific reference to the “Sanskritized emulation of those above them on the social ladder” [sic.]. This bears testament to the much discussed Sanskritisation of the outer-reaches of non-Hindus or even those considered outside caste. For instance “ex-untouchables”. Saavala speaks of a particular case, where the need to emulate the proper ritual of a Satya Narayana puja had some bearing on the social mobility of a family particularly with their ability to prove they could pay better dowries for three grown daughters. This has been discussed in chapter 3 above, specifically how the force of ‘doing the right thing’, another phrase for the Sanskrit term *sadācāra*, seems to have an influence greater than that of legal provisions for society at ground level. According to Saavala’s interview with Urmila, whose parents were ex-untouchable, the family could neither have arranged this Sanskritic ritual nor tried to do so due to severe discrimination in their village of origin. However, since migrating to another part of the country, they attempted to alleviate their social standing, by elevating it with an arrangement of ritual worship not within their own tradition because,

Everybody's eyes are on us. The puuja helps us to get rid of that influence, helps good things to happen.

This confirms that there are standards for *sadācāra* which are manipulatable by individuals and families, rather than simply dictating to people what they should be doing or not doing, as the case may be. Saavala finds (2003: 166), that one of the fundamental features of the lives of this family unit was that the father was suffering the burden of having three daughters of marriageable age, and no sons. The “root cause” for their suffering, she says, was this perceived inability to pay large dowries, and to “marry them off to educated grooms from high-status families”. Two elements become clear in the above situation. One that a family traditionally un-used to Sanskritic ritual in and of itself, are emulating these in order to gain approval-seeking (“eyes are on us”). Secondly, and more importantly, the causation of this approval-seeking is notably rooted in the need to reflect better status in order to gain access into the social strata of one's betters (high-status grooms). In its entirety the situation is reflective of the collective conscience of a social family unit adjusting its traditional behaviour, based on the current acceptable social behaviour of the particular group where they are. What throughout this thesis has been called ‘bartering for better ancestry’. This is *sadācāra* in action, as it were. It seeks to manipulate a scenario where a family that does not have enough means to generate huge dowries is seeking to gain a better status in society and thus make their daughters more attractive as potential marriage partners, by simply doing ‘what is right’, or at least deemed to be right. The importance of the group was referred to as superior to the individual, as individualism in Indian thinking was considered a “bad” motive (Inden, 2006: 15).

Osella and Osella (2000) in their examination of an upwardly mobile ex-untouchable caste, the Izhavas in Kerala, observed how religious consumption has become a means by which to transform material capital into symbolic capital. For instance, their ethnographic study suggests that better-off Izhavas try hard to shrug off their perceived negative characteristics by placing investments in spiritually superior temple donations, among other things. There is also an effort to seek a personalised connection to the divinity through expensive vows and arrangements of temple ritual. In Hindu terms, as pointed out earlier, there is rarely discomfort in relating wealth to status. Hindu practices give ample space for interpreting the sacred in close connection to economic success. Seeking such blessing by recourse to wealth awaiting its

transformation into wealth in terms of prestige and finally upward social mobility is being noted across middle-class groups (Osella, 2000: 168-169).

Therefore, *sadācāra* shows itself within this thesis to be appropriately applied to much dowry linked behaviour; governed by the fluid logic and wider perceptions of custom. Importantly it does not alienate any local influences, in fact it makes room for them precisely because the primary focus of the term is the inherent 'goodness' or '*sad*' prefix to the notion of a legally understood term *ācāra* or behaviour.

8.3 Troublesome terminologies

'Hindu law' as a term in itself is a cumbersome construct, but a placative in usage widely which brings its own problems (Menski, 2003: 73). As a collective term as such, it has been variously codified for the purposes of uniformity and easier application across a very diverse land, where pluralistic solutions are not seen as a mark of modernity. There has been general agreement, which in this area as any is rare, that the pedigree of Hindu law is possibly one of the more ancient systems of jurisprudence. That the texts which form the basis for this pedigree are numerous and varied, and deeply plural in nature is most often glossed over. Hindu law whether among practitioners, academics or specialists is now considered an acceptable term to denote the vast textual and oral tradition which encapsulates the very amorphous concept of dharma. The reason to reiterate the relevance of nomenclature here is to highlight how, as Hindu law has come to be accepted as a term encapsulating a wider most plural set of systems of lawmaking, then similarly dowry as a term has come to be used for plural locally charged behaviours under one heading. For academic purposes and to help identify and define the causation of the socially rooted norms of behaviour linked to dowry prestations and demands this thesis has used the term *sadācāra*.

Relevant to note here is the fact that Orientalist constructions have obscured the plural nature of this system of jurisprudence far beyond the scope of one doctoral study, or a single essay to meaningfully redress. However, to begin by making note of the nature of the research conducted to date is to lay bare the framework, and expose the mechanics of how *sadācāra* comes to light as a crucial determinant in the cultural creation of dowry practice. Methodologically the historical school of jurisprudence (Cotterrell, 1989; Menski 2000: 99-110), which takes into account the organic progression of legal systems viewing them more as legal philosophy of a sort is crucial here. This comes close the

purist definition of the Latin term juris-prudence as meaning quite literally the morality of the law. That notion is not so removed from the historically rooted analysis of the ancient Sanskrit literature. However, alongside distilling a rational argument for an evolving legal philosophy of sorts one must consider the probability that normative orders and legal rule systems transpired through a process of logical elaboration; but have not been systematically documented in written form. Menski (2003: 73) asserts that most of the Hindu legal system, then as in the present, was negotiated at local level and remained largely un-documented. This fact again re-asserts the importance of social behaviour that is acted out at local level, but may not always find its way into codes of legally sanctioned behaviour. Dowry-behaviour as we saw in chapters 4, 5 and 6 clearly exists in expectations surrounding what is believed by the father of the bride and his peers, and superiors to be the correct 'bedeckment' for his daughter, in keeping with his social stature and aspirations, as well as bartering for better ancestry as noted by Inden, (1976) in medieval Bengal; specifically enjoined in the clan charters or *kulaji* texts of the period (see chapter 5, specifically 5.2).

As has been pointed out, the dowry ontology itself is shaky, but the practice is not. Whether locally referred to as '*niyam*' (norm in Hindi/ Bengali) or *reshum-riwaj* or *riti-riwaj*, all of this behaviour surrounding giving and taking of gifts at a wedding seem to be governed by a fluidity that is disconcertingly constant. As we saw in chapter 4, the trouble with defining dowry has been manifold (see in detail Menski, 1998). In a peculiarly Indian context worse still perhaps, given all the variant local and regional colours and shades that need to be filled in as well. For the purposes of further future research, a state by state community by community search will need to be undertaken to compile a comprehensive list of names given to the act of dowry across India, and Indian communities abroad. Precisely because of the fact that the DPA has had considerable public dissemination; its infiltration into popular belief leads to the newer ideology that all dowry is bad, these behaviours have therefore been further demonised and sent underground. Thus, in terms of any future attempts at gathering newer fieldwork data the identity of the researcher will be crucial to gaining true accounts from the participants in any such research.³⁷⁴

³⁷⁴ Saavala (2010) and Vishwanathan (2001) have highlighted this problem in a peculiarly Indian context when dealing with domestically reliable data. Sharma (2001) also points to this hurdle in gaining true accounts when relating to any research conducted on women. Further, as mentioned in the main part of the

An inherent problem with defining transactions at marriage is that they tend to be ambiguous in nature. The current legal definition of dowry does not take cognisance of the on-going payments incumbent on the wife-givers for the duration of their daughters' life, though "in consideration of marriage" was finally altered to "in connection with" (Bhatnagar, 1996: 4). In the current thesis the terms *stridhanam*, same as *stridhana*; *dan*, *pon*, *dabi*, *tattva*, *hunda*, *dahej*, *daaj* among other colloquial regional language terms have been variously discussed in terms of their phantasmal connection with the phantom of dowry. As highlighted right at the start of this thesis, dowry is described as a phantom because in the Indian context it appears to have no ontological existence. And yet, as we saw above, dowry exists. Therefore, a brief revisiting of the main terminology that signifies dowry gifts, dowry behaviour and related ideology is worthwhile.

Most of the terms mentioned here have already been dealt with in some detail in the text of the main thesis, chapter 4; section 4.1 in particular, highlights and problematises the arena of definition and dowry as a conundrum with ongoing ontological and sociological repercussion with little clarity. What bears repetition however is the plural nature of the practices that these terms symbolise. Further, in most cases, as locally variant as the behaviours may be, what appears to be difficult for most western academia to ascertain, and even grasp is how each specific term has a similarly tangible element of social pressure attached to it. The word *dabi*, for instance as Fruzzetti (1999: 30-31) explains it and discovers lays emphasis on the burden of the act of gifting. Her considerable fieldwork in Vishnupur, West Bengal revealed to her an arena rife with unspoken rules, but all the players, particularly the women were conversant with these rules or norms. Fruzzetti finds that the negotiation for a suitable match in marriage is never made without the father of the prospective bride or 'virgin' being aware of the expectations linked to gift giving behaviour. There is a clear awareness among the actors that when there is an expectation of the offering of a "virgin in marriage" the bride bearer will consider that the receivers will demand a second supplementary gift if they indeed accede to the first gift of the girl herself.

The word *dab* in Bengali refers to pressure, or force, even demand. What cannot be overemphasised once more is how contextual the linguistic data is to the specific situation in which it is being used. Plurality remains key to understanding Indian cultural

thesis, Srinivas (1952) had clearly pointed to the mechanics of involving a female social scientist, with the appropriate background to unearth clearer pictures of what is at play in the field.

contexts when unpicking custom. If the families involved in the marriage negotiation, are neighbours or have had promissory discussions laid in the couple's childhood to create an affinal link in later life, the pressure will be different to that of two families only recently acquainted. Or, for instance if the couple have made an initial love match, building on an arrangement set up by the wider family or group of familiars. As much as we have noted above, the detail depends on the local context. If they are family friends, and have shared a relationship for some time other factors may come into play. The practical implications of sharing food, and even friendship transform the nature of a relationship between individuals making the possibility of practical kinship as opposed to official kinship, and these are negotiable relationships as well (Bourdieu, 1977: 34)³⁷⁵. Another relevant aspect of these relationships is the possibility of faking one's antecedents. Particularly in current urban set-ups it may be possible to present one's caste background, as veritably higher than it is. One can "pass" oneself off as something one is not. The risk of losing face if this is detected may discourage groups from such an option (Osella, 2000). Caste behaviour is linked to all kinds of sensitive issues in India even today. Friendships can be threatened even by small infractions of behaviour not deemed acceptable in areas of life other than the highly auspicious ones set out through marriage. For instance friendships between young people of differing backgrounds can be fragile (Osella, 2000: 230), see in particular the case of the low and high caste youths in Kerala and their relationship. In spite of close ties of friendship they were not in the habit of visiting each other's homes. They were forced into a situation where the higher caste boy had to accept a drink from his low caste friend's home (considered polluting due to the low caste status).

Even if the ritual purity of caste related behaviour does not govern public practice, it continues to have a strong influence on intimate relationships, particularly in the realm of the home. By extension, of course marriage and negotiations are within this realm, and therefore likewise affected. Osella and Osella (1998) also point out that within the realm of the home and familial relationships conventional hierarchies tend to govern friendships and are rather strictly maintained. Someone who does not adhere to these rules is felt to be showing a lack of feeling for the game (Osella, 2000: 228-229). It is better to behave

³⁷⁵ Worth noting however, is that such divisions into official and practical kin can be criticised for granting the practical position of kin relations the hint of contestation, even if the context be absent. Besides, these two sides of kinship are interdependent (Peletz, 1996: 81).

within these game rules therefore. This also underlines our sense of *sadācāra*, as being fluid and ever changing in local scenarios, in a situation specific sense.

But what remains stubbornly almost fixed, in the way expectations are heaped on the father of the bride, or the other bride bearers and the natal family of the girl to “suitably bedeck the bride” (Chatterjee, 1974: 258). The behaviour in the attendant society, whether that be the Bengali *samaj* or the Punjabi household governed by the *reshum-riwaj* that governs the giving of *daaj* (Oldenburg, 2002: 87-90), the ideals encapsulated in the texts are mirrored in the respective social acting out of the marriage. The clear consonance that the products of the marriage, as in the children, would carry the blood-line and ancestry of the couple linking their respective affines, is also crucial. And, further as seen in the section above, gold and in modern terms moveable wealth is underpinned in a social sense incumbent on the father and his peers to “bedeck” the bride in keeping with his betters so as to prove and move his own rank, and keep up to fourteen generations of his own ancestors satisfied. Several *dhar as ū ra* verses are explained by commentators as expressing the duty of the bride’s family to adorn her suitably (Chatterjee, 1974: 464). This clear enjoinder to the parents, specifically the father of the bride, to “bedeck” the daughter suitably enough to then become acceptable as a gift is of repeated primary concern this thesis has proved, (See discussion in section 5.3 for more literary detail). This reiteration through the *sū ra* and *śās ra* literature is a very telling clue toward the idealisation of dowry, or any goods that go with the girl. It clearly was a custom to do so, but maybe people needed to be told to take it seriously in the ancient and medieval period. In its earliest sense the notion of moveable property, in terms of brilliant attire, jewellery and adornments all point clearly to the conceptual importance of bedecking the girl. This must be read as an enjoinder to the father of the girl to make her ritually acceptable in the eyes of the groom, and the family who will receive her. This also ties in with ideas of status of the giver and receiver, as seen in sections 4.2 and 4.4 above.

The role of the father in the act of gifting, both the girl and the goods that go with the girl, is emphasised in all accepted forms of marriage. However, it is evident from the verses that though offspring were considered to belong to their father and his family, they were not possessions in the manner of cattle etc. or other items that could be given away when in debt for instance. The married couple were ideally considered joint owners of property, a fact borne out by the term *dampati* used for the couple. Essentially the pair

was looked upon as joint upholders of the world of *rta* through an adherence to *dharma* (*dharmena*). Sternbach (1965: 370) in his analysis of the *Brahma*, *Daiva* and *Prâgâpatya* forms notes:

[i]n the case of these three forms, contrary to the *Arsa- āha*, the obligation to give a dowry was clearly expressed. So we may say that the bestowal of the dowry was the essential point in these... and they were the highest most esteemed forms...

These, and similar findings by ethnographic investigators ring loud and clear of a clear and present expectation to accompany the gift of the girl, with an extraordinary supplementary gift, which has come to occupy central importance for the groom-givers. The fact that it adds to the financial standing of the family is of course a factor that must not be ignored. In fact we saw in the main thesis, and as further discussed here in this concluding chapter, that the material gift has come to occupy a status and importance greater than that derived off the girl as a person and a new family member. Therefore, once more one is reminded of the fatal consequences of the auspiciousness loaded onto the carrier of the gift if the material gift is valued more than the carrier herself. Too often she is sacrificed, and the gift consumed, never returned. In *Chaturanga* Tagore (1916) points out, “The scriptures forbid the sacrifice of female animals, but in the case of human beings sacrificing females gives great satisfaction.”

Consider this testimony from an insightful synthesis of Hindu laws and usage relating to the position of the Hindu woman in late eighteenth century Indian society;

“...a woman is not regarded in Hindu law as an active party in marriage. In fact, she is hardly regarded a party at all. Marriage is viewed as a gift of the bride by her father or other guardian to the bridegroom: the bride therefore, is regarded more as the subject of the gift than as a party to the transaction.” (Banerjee, 1879: 45-46).

What is insightful is that the discussion continues to talk of why there is a need for guardianship of the girl about to be given as a bride. We have not made enough in this thesis of the fact that brides being bartered for marriage were often underage, and not in a position to negotiate on their own behalf. Child marriage has not featured in the discussion above at all (See Menski, 2003: 322-373). But it must be considered that until recently girls as young as ten were considered not only appropriately aged, but as Gooroo Dass Banerjee (1879) surmised and echoed the sentiment of a majority of the populace that “minors are not only eligible for marriage, but are the fittest to be taken in marriage”.

This sheds great insight into the heavy burden on fathers to negotiate ably on behalf of underage daughters. It also lends further light to the conceptual underpinning of the processes by which girls continue to be seen as without legal position, and therefore in need of guardians to be bestowed as gifts to an affinal family unit. These sentiments albeit of an older, past generation, co-exist with modern belief in the empowered woman in Indian society today. And, yet we see the discussion in Saavala's (2010) thesis on middle class morality returning time and again to the inability of even highly educated girls, or women, being given or having true autonomy over their own destiny.

As regards the continuing confusion over terminology when dealing with modern manifestations of dowry the case of *stridhan* in Kerala is interesting to highlight in brief. Vishwanathan (1993: 103) in her exploration of Christian marriage making rituals and rites in the southern parts of India notes the significant time and energy spent on the ritual receiving of the *stridhanam*. Briefly, as explained earlier in this work there has been serious confusion about defining dowry and *stridhan* (see 4.1) as distinct from each other. In linguistic terms they bear little relation. That the notion of *stridhanam* as exclusively women's wealth seems a more modern explanation where it has become crucial to define areas of ownership in relation to marital property in legal terms with the ever-increasing divorce and settlement arguments preoccupying family courts across India. However, from Vishwanathan's description the practice of ritual *stridhanam*, the manner in which it is seen to change hands and the phraseology employed when the amounts are not acceptable are all curiously reflective of dowry behaviour in other communities across India. The fact there is feasting involved, that the affinal relationship is marked in a significant and separate ceremony from that of the marriage, where the previous negotiation is openly discussed in terms of what has been agreed by whom and when and where. There is a keenness to adhere to practices which exemplify the superiority of the wife-takers. This is also marked in the power of the groom-givers to walk away from a public reception, thereby breaking with the agreements simply by saying "Our son is not yet ready for marriage" or even appallingly acceptably "We have received another proposal which we are considering". Pleas may follow to allay their expectations and thereby save face. In modern terms such negotiations often occur in a setting described by the social actors as "engagement" parties. As Kerala is seen to constitute a mainly matriarchal culture with a strong history of educating their women, the cases where such transactions go awry may reportedly be rare.

In a horrific case of dowry deferred (See Dowry Today, Documentary) a young Syrian Christian girl, Gracie (2003), had to flee Kerala to seek refuge with her brother and his wife in Mumbai due to continuing harassment and dowry demands. In fact when interviewed, the natal family spoke of their continuing burden to repay loans taken to furnish a fine wedding, and ongoing demands. The church in this case (Gracie) took a 20% cut of the dowry, but when the groom went missing with the majority of the bride's jewellery and cash, the Church has not mediated to recover the wealth. However, what must be referenced here is the fact that in the conception of peoples minds, most often dowry has in contemporary times come to signify such a demonised transaction that the milder, more apparently empowering term *stridhan* may be used for what is overtly a dowry transaction. As in Vishwanathan's (1993: 103) observations, this is symbolic of "the prospective incorporation into the family" of the daughter-in-law. In a curious development the church intervenes in most of these negotiations, as an official mediator, and even accepts a cut for their effort. Often discussions may take place with the blessing of a Bishop and may even be carried on in the premises of a Syrian Christian church. That this process indicates forms and the active presence of community courts and tribunals could, in the current climate of much concern about such informal mechanisms, give rise to yet another very pertinent study about dowry practices in India.

8.4 The four-fold path to ascertain the 'right thing to do'

Not enough attention has been paid to the manner in which human society ascertains what in a specific context 'the right thing to do' is, or how indeed it is arrived at. Enough academic attention has been lavished on *dharma* idealising the spiritual and legal merits of a cosmologically underpinned entity that presupposes the 'rightness' of good behaviour. The accession to the throne of a good king, his understanding of being a good ruler through *rajadharma*, all these have been carefully constructed for students of legal philosophy. The question which has occupied this thesis in the main is how do people decide what is the right thing to do when it comes to arranging for dowry in relation to marriage?

Again, as much as a plurally constructed response to this is appropriate, the cultural texts themselves have clearly demarcated clues of how the world works. The work of Japanese jurist Chiba (1986) and Menski (1999- 2011) have been offering crucial building blocks through which to understand the notion of lawmaking at ground level.

Menski (2003: 124-125) summarises the case dextrously in highlighting the constant battle in legal circles with ascertaining textual authority. With specific reference to marriage, and as noted in chapter 5 above the *As a ayana r hyasū ra* 1.7.1-2 makes note of the “very diverse” practices of the variant communities across the then un-unified sub-continent when it expresses:

Very diverse, indeed, are the customary practices of different countries and villages; one should follow those in marriages. What, however, is common to all or most shall be declared here.

In Menski’s translation he introduces the word “all or most” being careful to recognise the plural leaning of the ancient and medieval cultural texts. They are notably never sweeping in the generalisations made, and if they do so, they refer to an ideal vision, not social reality. Menski gathers from perusing these texts contradictions and important queries regarding the hierarchical appropriateness of one’s family or community customs as versus the other *smṛiti* textual prescriptions, which would have occupied the minds of those needing to negotiate marriages. There has been no detailed jurisprudential debate concerning the older source material and its hierarchy, as stated above in chapter 2, section 2.4; however, in *Manusmṛiti* 2.6 and 2.12, respectively, the guidance or rule is stated as below:

“The root of religion {*dharma*} is the entire Veda {*śr* } (then) the tradition and customs {*smṛiti*} of those who know (the Veda), the conduct of virtuous people {*sadācāra*}, and what is satisfactory to oneself” MS 2.6

“The Veda [*śr*], tradition [*smṛiti*], the conduct of good people {*sadācāra*} and what is pleasing to oneself {*ātmanā* } they say that this is the four-fold mark of religion (dharma), right before one’s eyes” MS 2.12 (Doniger, 1990:17)³⁷⁶

Menski’s observation that for all practical purposes common Hindus would most certainly not have first gone to the highest of sources as the *smṛiti* represented, is reasonable, as in the case of my confused cousin. The cultural texts purport to indicate guidance on hierarchy not an actual suggestion of how to ascertain authority. Therefore,

³⁷⁶This translation of *dharma* continues to be problematic, like other core concepts in Hinduism: according to Menski (2002: 112) it is neither ‘law’ nor ‘religion’ and yet he believes it “encompasses parts of both”. In fact this shows how internal categorisations in Hindu culture don’t quite match with those of other religious traditions

error certainly lies in assuming that at ground level everyone had access to *śruti* or *s* texts. Ordinary individual Hindus would have accessed instead, as today, a fluid customary tradition or even perhaps morality as described in the epics, and disseminated by their peers or perhaps elders. As Menski mentions, commonsense suggests that it is far more useful to “gauge the dharmic needs of a particular situation” by turning to social reality. These textual statements must therefore be read in reverse as it were. As Menski has suggested, and I concur, the sequencing for the sources of dharma needs to be examined in the order beginning with the first, with foremost importance being given to individual satisfaction as *ā āna* and therefrom upwards. *adāc āra* thus plays a crucial role in how society manages itself, through the individual. To be clear this conclusion does not imply however, that *ā āna* or the Hindu individual’s self satisfaction somehow automatically relates to becoming a valid source of *dharmā* in Hindu social reality. It is practically pre-eminent, but more in terms of how social reality works, than how legality functions. In fact in modern interpretations of law we see how Mahmood (1981: xli) almost ignores the individual aspect relevant to law making or law seeking, and instead interprets the individual dimension more in keeping with the notions of “equity, justice and good conscience”. This once more creates then another layer of secular, legalistic interpretation. Till these aspects of ancient Hindu law can be meaningfully translated as being valid to read law making at societal level, we will continue to see the current confusion at thinking that top-down models of law making can in the long term work within society.³⁷⁷

As concerns the legal roots of *sadācāra* in the notion of *ācāra*,³⁷⁸ or behaviour, a brief explanation will not be out of place here. Derrett (1968: 149) translates from *ā yayana* that “whatever a person practises, whether it be in accord with *dharmā* or not, is declared to be *caritra* because it is the invariable usage of the country.” Now in Menski’s (2003: 119) opinion this at first glance implies that “appropriate behaviour in itself serves as a source of dharma, requiring no further intervention from anywhere”

“When the first element is replaced, as it regularly is, with other contextual markers, the theological connection to Veda is also weakened or lost. Texts speak freely of the *ācāra* of groups, of particular places, families, castes, and various corporate groups. When

³⁷⁷ When in so many ways one is seeing even a fine philosophy like democracy disintegrating surely the time is here to seek systems of law outside the western model for clues to how societal harmony can be accessed.

³⁷⁸ See also May (1985: 58-59) for a variety of meanings and forms of *ācāra*.

pushed beyond boundaries of its archetype, therefore, *ācāra* appears to be nothing but the norms accepted and imposed by the leaders of various social institutions. This slippage is very important for understanding how the famous recognition of customary laws of various social groups in Hindu jurisprudence came to be incorporated into the texts.”

Davis (2010: 146-147)

Julius Jolly (1975: 95-96) observed that the mystical authors of the Smṛiti texts were already aware and “recognised the necessity of the existence of other laws and regulations. It is a significant remark that the science of law (*ya aharasās ra*) like grammar...is based on usage (*ācāra*).” Therefore the two concepts are clearly linked.

Society seeks harmony in rituals and their repetition, particularly when it does not seem reflected elsewhere. In times of war, in terms of strife ritual is reassuring, even grounding for communities and cultures across the world. In terms of marriage making the harmony being sought is that of the couple as a single, individual householder unit in itself, but connected to the macrocosmic sphere. But further, as we have seen above, in an ancient and even modern society where the nuclear unit is important for the links and connections of a network it creates and is not always important for the couple by itself. As seen, in chapter 1 while discussing the theories at play in the wider thesis, and in particular the nature of the primary sources there is no established iconography for the most ancient period under scrutiny here. However, as demonstrated in the same chapter, when explaining the circle of solidarity represented in photo plate 1, there are in Indian specifically in Maharashtrian society remnants of an ancient art form in the shape of the Warli painting tradition. As discussed, these paintings, and etchings have their roots in a much older cave drawing tradition which record in a manner of evidence the aspirations of that older society. These modern depictions of clan and community aspirations clearly display the strength of solidarity, and of how the emphasis seems always on the functioning of society as a wider unit, based on the proper functioning of the smaller units within it. There are depictions of how society comes together at different times; for market day, for a celebration of the harvest and centrally for this thesis of course, gathering to celebrate a wedding. Examining the manner in which the couple are depicted, completely as the central focus of proceedings is important to discuss briefly here. The picture depicts the final taking of leave of the girl, seeking the blessing of her father. The bride is being carried in a palanquin, with a trumpeter leading the way, to banish bad spirits on the way. The groom is arriving on horseback, while the wider

community may be dancing with much gusto. The marriage hall is splendidly decorated, and all of this is witnessed by both the moon and the sun in the sky. All is at harmony with the other. This is I believe the closest one can come to a pictographic depiction of right and appropriate behaviour at play, *sadācāra*.

8.5 Tying up the theory that dowry is good *dharma*

From the chapters above and the final knotting of the threads in this last chapter it has become clearer than before that dowry functions in Indian communities as a conglomerate of culture, a complex and intricately interwoven custom, inherently integral to what is considered a good marriage. Custom was put forward in terms of text, as a loose system of ideals. Text is not always required to attest reality, but the early texts in question do attest the ideal condition society was intent to attain. In this regard the theories discussed in terms of methodology in chapter 1, see Fig. 2, it is worth reiterating the underlying gift-theory once more crystallised into this current applicable form by Marcel Mauss's post First World War theory.³⁷⁹ Unlike the British social anthropologists who focussed on studying social relationships and their development, Mauss evolved an approach to examine collective representations, or in other words, cosmological concepts. This is why his work has been central to the discussion on dowry in tradition and text here, taking into account the emphasis of the plural collective social conscience under scrutiny here.

For clarity, like Durkheim, Mauss attempted to establish abstract categories and conceptual notions to articulate essential properties inherent in phenomena under the social microscope, rather than to emphasise the empirical dimensions of specific cases. This then presupposes the social actor's own definitions of social life being somehow inadequate. Further, in the same vein, the first and foremost most evident theorisation of data is consequently likely to be most superficial. This was an attempt to gain access to the laypersons', even the social actor's own categories of social and cultural description to discovering the underlying components of culture. How Mauss differed from

³⁷⁹ In sharp contrast to Durkheim's emphasis on the principles of 'mechanical solidarity' which integrated the broad class of segmentary societies based on clan division and territory offered a model for British scholars like Radcliffe-Brown and Evans-Pritchard who developed their perceptions of these societies based on this. Among the French intelligentsia, and particularly parallel to the development of British social anthropology in France was the work of a collective of scholars enthused by Durkheim and focused to work around the journal *Année Sociologique*. Among this group only his nephew Mauss, survived World War I to strengthen and carry forward the tradition.

Durkheim, and why that is structurally crucial to the discussion at hand with regard to the observation and functioning of dowry is that Mauss laid much emphasis on the synthetic aspect of sociological analysis. Mauss considered a study complete not merely when the phenomenon under question had been analysed down to its bare and basic form and subsequently recast into an evolutionary series, but when the phenomenon was re-synthesised into a totality; so as to account for its plural nature by explaining all its correlations and differences, casting it thereby into a valid sociological explanation. Crucially, this aspect of Mauss' method draws the discussion here back into the nature of plurality inherent in the social reality of *ācāra-sadācāra*, whether or not the social actors themselves explicitly refer to it as such. This is important in sociological terms when considering the principles of operation of the observed phenomenon, in this case dowry behaviour, rather than the abstract form of observed social relations.

When Mauss's study *The Gift* (1925) was related in chapter 5, particularly 5.4, the critical aspect of his theory was examined, by which it was demonstrated that the manner in which a gift passes between persons also highlights their relationship to each other. That means the individuals then articulate their relationship by maintaining a hierarchy of reciprocal giving. It was discussed that since the recipient has to reciprocate as well as receive, there is a multi-dimensional aspect to the act of giving, and thereby to the acting out of dowry practice at ground level. Mauss further reveals that the gift has significance on a multi-dimensional scale of social relationship building; symbolic, individual and social. Further that these dimensions influence many other spheres of social life, namely religious, economic, legal and even moral. This is in harmony with Mauss's notion that what must be analysed are 'total social facts', not just relations between two or more elements arbitrarily isolated from culture, but to examine what is between all the component parts. Instead of attempting what Durkheim did, at establishing universal laws, Mauss aims to make several factors intelligible by demonstrating that their meaning lies in their inter-relation rather than taking each one individually. Individual social facts are therefore to be explained as parts of an integral cultural complex.

Similarly, dowry it appears is a phenomenon which can easily be identified as an example of Mauss's total social-cultural phenomenon; it encompasses economic, religious, social, jural and political aspects of culture. Further, dowry is seen to function as a system of affinal gifting and transaction not for material wealth and status implications alone, but to seek, to harbour and maintain a relationship through an

intricate and long-term progression of symbolic and actual gift-giving. Therefore, dowry fits into the explanation of the gift-giving system identified as ‘pot latch’ (see Mauss, 1990; White, 1987: 552). Once more the notion emerges of bartering for better ancestry and a more solid social standing, not uncommon in most human society.

Reiterating ideas already expressed in chapter 2, above, but vital to the summation here; through an “unholy alliance” as Halbfass called it, (1992: 9) colonialism “elevated *rah a c* formulations to the level of hegemonic text” (Raheja, 1988: 497-523), while Indological discourse continued to project “the essence of Indian civilization” as opposite to that of the West; that is as “the caste system and the religion that accompanies it, Hinduism” (Inden, 1986: 401-446). In the hands of the colonialists, caste became an administrative tool to “arrange and register” Indian society into a cohesive sum of parts. This further helped to transform *rah a c a* hypocrisy into social fact. Essentially, as discussed at length in chapter 2 above, *rah a s* represented an integrated socio-politico-religious ideology which developed during a specific historical period. This was a result of certain social and political transformations as discussed before. Contained within this ideology was the worldview of the elite *Brahma s*, which found expression in their vast literature. These texts reflected the changing circumstances of the times as perceived by the *Brahma s*. This works neatly along with Saavala’s (2010) modern day assertion of observable Sanskritisation of the middle classes in India today. The need to emulate the elite in order to gain a superior standing both in society and daily life, is thus noted by Inden (1986) and Fruzzetti (1996) in their study of Bengali society over a period of decades.

Worth noting here once more, is Clifford Geertz’s idea of culture as a semiotic concept. He equated ethnography with interpretation, or the reading of text. His explanation that the purpose of cultural analysis should “not be an experimental science in search of law but an interpretative one in search of meaning” (1973: 5) is relevant in tying up the notion of dowry as *dharma* with a very small ‘d’. Further, in recalling the researcher-ethnographers position as discussed in chapter 2, he gave greater importance to interpretative insights, thickly described, than to ‘thin’ scientific conclusions, as the product of ethnographic endeavour. I stressed this emphasis on being aware of the critical elements of cultural specificity in attempting to draw generalisations about how dowry as a custom functions. It is most plural in its practice. This became relevant in examining

my own position as a researcher involved in the study of my own culture. In particular, noting my stance as a woman, researching an issue that affects Indian women.

Practically speaking this means that a written text is deemed to be more authoritative as it cannot be directly questioned or contested. However, texts in Sanskrit would still be open to interpretation, and thus would not simply be ‘fixed’. Writing however did restrict the access to the corpus of literature limiting its perusal to literate *Brahma as* and *k a r yas*, thereby reinforcing their privileged status. But it could not be held that a text is simply ‘the law’.

Dowry, as I have emphasised throughout this thesis, is clearly representative of *sadācāra*, and since this concept is interlinked with custom, we must examine here further how custom itself functions in the Indian context. In fact, seeing dowry as *sadācāra* it becomes important that it should continue as a practise, since it is perceived to somehow maintain the wider harmony in society. So the thesis attempted to understand how custom works in Indian society. Chapter 6 in particular examined the customary practices in Indian society in terms of dowry and the related dowry problem(s). Dowry is not important for itself alone but for the harmony it is seen to uphold in its very practice, as most traditions are.³⁸⁰ With particular reference to custom we have seen how custom is encapsulated within the textual tradition and then replicates itself in the behaviour considered appropriate by that particular community. As discussed, in chapter 2, the composition and compilation of the texts comprised primarily of enumerating the ideology of the dominant group, the *Brahma as*, who upheld themselves as models to all society. In so doing they created a tradition of upward mobility characterised in various ways throughout the texts, and today evidenced by modern sociologists studying modern middle classes and their preoccupation with monetary upward mobility (Saavala, 2010). To conclude, Kulin polygamy is one such by-product, dowry another (chapter 4).

Dowry is *sadācāra*, even if it is not spoken of as such. Not all *sad* or good *ācāra* behaviour is necessarily ‘good’ in terms of modern expectations and norms. We must not lose sight of the range and change of expectations of positive and negative aspirations and related behaviour within the field of marriage considering the period under review is admittedly vast. Dowry as a cog of culture works. It has a proven life of its own; it has

³⁸⁰ Haraway’s (1988: 575-599) idea “practice is persuasion”; following that somehow the continued practice of an given act carries the coercive force of persuasion to continue that practice. And the emphasis in the present thesis is quite squarely on practice. See also Campbell, (2004: 162-182) for an able critique of Haraway’s feminist reflexivity for use in social science studies, and its wider applicability.

successfully operated for a minimum of three thousand years, give or take a century. It refuses to go away. Then perhaps, it is fair to stake an assumption that dowry is necessary to Hindu/Indian marriage in some way.³⁸¹

To reiterate the concluding analysis, from the above therefore:

“Dowry is in many ways an archetypal institution” (Srinivas, 1984:7)

Dowry will not be made illegitimate, in spite of many decades worth of effort, and confused law making. This discussion has laid bare the problem at the very core of this thesis: one cannot outlaw what is considered ‘the right thing to do’. Whether it is called as in Hindu classical terms *sadācāra*, or in modern analytical terms as *dharma* with the tiny ‘d’. Dowry not only exists, it persists as a problem, which will not be defined away. That the *kulin* preoccupation, as seen above, with preserving or trading status for wealth is so widespread goes to the very core of the issue.

It appears from the discussion above that dowry needs to be given for a clan’s prestige to be maintained and sometimes bartered, as expressed in the modern middle class for a better ancestry. Dowry, therefore as a total social phenomenon, has an inbuilt sanction to its adherence by the wider social group. As we have seen, neither the legal sanction of prison or punishment is strong enough to delimit its influence in the field of marriage. Perhaps not even to curb it. It demands, therefore to be placed under the social microscope again, by a range of theorists, to recast it as a positive part of marriage arrangements.

India’s Dowry Prohibition Act (1961) appeared to outlaw dowry, but didn’t. It has proved a misleading educative tool, causing more confusion than proving curative to a deeply entrenched customary scenario. This thesis considered how and why dowry has long defied legal prohibition. The analysis here clearly demonstrated that dowry was, is and remains a major determinant in ‘ideal’ marriage alliances. Thereby this thesis has aimed to fill a research gap in the current understanding of dowry as a normative marital custom. To deconstruct the demonised form of dowry will be difficult. However, the existence of the lengthy and comprehensive research in this thesis will go some way toward addressing this issue again.

³⁸¹ See the case of Gracie and the acceptance of dowry in a Catholic scenario, where the Church accepts a ‘cut’ or percentage of the dowry in a Keralan Syrian Christian marriage ceremony. (Dowry Today, 2002 documentary)

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Transliteration conventions have been modernized and the text titles in places are abbreviated

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- ĀpDŚ *Aphorisms on the sacred law of the Hindus by Āpastamba.* (ed.) G. Bühler. Bombay 1898. [Trans. Bühler 1868]
- ĀpGS *Th Ā astambha hyasūtra.* (ed.) M. Winternitz. Vienna 1887. [Trans. Oldenberg 1882]
- ĀśGS *The Āśvalayana hyasūtra.* Leipzig 1864. [Trans. Oldenberg 1886]
- BDS *Das Baudhayana-Dharmasūtra.* (ed.) E. Hultzsch. IInd ed. Leipzig 1922. [Trans. Oldenberg 1886]
- GDS *The Institutes of Gautama.* (ed.) A. F. Stenzler. London 1876. [Trans. Bühler 1898]
- JB *Jaminīya-Brahmana.* (eds.) Raghu Vira and Lokesh Chandra. Nagpur 1954. [partial ed. and trans. W. Caland 1919]
- JGS *The Jamini- hyasūtra.* (ed.) W. Caland. Lahore 1922 (Reprint 1984) [Includes trans.]
- KāthGS *Kā haka hyasūtra* (ed.) W. Caland. Lahore 1925.
- MBh *The Mahābhārata.* 19 volumes. (eds.) V. S. Sukthankar, S. K. Belvalkar, and P.L. Vaidya, et al. Poona 1933-66. [partial trans. Van Buitenen 1973, 1975, 1978]
- MDŚ *Manava Dharma- āstra.* (ed.). Julius Jolly London1887. [Trans. Bühler 1886; Doniger & Smith 1991]
- V *The Hymns of the Rig Veda.* Griffith, Ralph T.H. [Trans. 1892]

	Benares: E. J. Lazarus & Company.
VaikhGS	<i>a khānasasmārtasūtram</i> . (ed.) W. Caland. Calcutta 1927.
VaikhSS	<i>a khānasa- rautasūtram</i> . (ed.) W. Caland. Calcutta 1941.
YājñSm	<i>Yā ña a k yadhar aś ās ra</i> . (ed.) A.F. Stenzler. Berlin-London 1849. [Includes trans.]

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PROF Qld girl for 77 born H'some Kayastha boy from ghly edu fmly Eye Surgeon at Grand View Hospital MI, USA Caste no bar. Em: vnanigam@gmail.com #09953597144

PROF qld b'ful girl 4 Saxena boy 33/25 MCom, MBA Mgr-Tata Tele services, 10 LPA Caste no Bar. MB: 9351550555 Em: saxenav5007@gmail.com

CHAMAR Boy 27/55 B.Com 10LPA Business partner seeks Qualified girl. Caste no bar. Call: 09615593232 E: amajswar@hotmail.com

H'SOME NM Br. boy 28/5 Hs. BE C.E. wkg Hyd 19 LPA Res. Jaipur seeks tall ext b'ful qld girl high status below 25. Em: spitiwari155@gmail.com Mobile: 98200112033

B'FUL pgn4 26/161 IT-IT-IM Veg. Vaishya boy wkg MNC Mumbai, 7 fig sal. Send BHP sk26matr@gmail.com CasteNo Bar.MB:09893260965

SM for Mumbai based Punjabi Arora 27/510 MBA (NMIMS Mumbai) wrking as manager in MNC bank. A1:14Lac PA. Expected any beautiful, educated Hindu girl. Caste no bar. Send BHP at gauravarora309@sify.com #09820342543

SM4 Gupta boy 31/56 Engg. MBA from Premier Inst. well std abroad from ghly edu fmly caste no bar 09819031818 Em: forshadi@hotmail.com

PQ B'ful Girl 4 Supreme Court Adv. R.B.S. LL.B (DU) R-7-34/18 Lpa Own Hse in NCR PDS. PhD Fr. Sindhi Mr. Ben. Sta. Fly. Caste No Bar Ph: 09810857444 E-mail: pkmatr1976@yahoo.co.in

PQ b'ful girl wkg in USA for V.Fair Handsome Khatri boy 30/68 MSc(S) wkg in USA on HIB. Only Child of Sr. Cent Govt. Officer of Decent Status Based S.Delhi. Caste no bar. E: alliance6880@yahoo.com

SM4 Graduate Sindhi Boy, Own biz, 34 yrs. (Minor Arthritis problem) from homely girl. Caste no Bar. M: 98206 21125. Email: amritlala@in.com

29 / 5'10". Non-veg, teetotaler. MBA from IIM-Ahmedabad, IT engineer from IP Univ. Working with investment bank in Singapore. Middle class family. Looking for compassionate & well educated life partner.
Mail: matchmehra@gmail.com

SM for Hindu Marwari boy 25/51" Boom and having own wholesale business of Fabric A1: 10 Lac PA. Expected any Hindu beautiful, well cultured homely girl. Caste no bar. Send BHP at: manishagarwal09@sify.com or #09920342461

TAMIL Brahmin lyengar boy, Vadakalai, Gothra: Shadamarashanam, Dhanishta (Avittam), Feb 1983, 5'11" (178cm), very fair, BE(Hons) Comp Engg, leading digital marketing MNC in Singapore, (family well settled in Singapore) seeks fair, good-looking, smart, well-educated, cosmopolitan girl from respectable upper middle class Brahmin family. Send details with recent photos to geetha.seshadri@gmail.com Phone Singapore: 65 62440251.

For Handsome, Smart,

Vishwakarma Boy 30 yr, 180 cm, B.E. Computer, MBA-Vice President at Investment Bank-Japan, Sal more than 150K US\$ Match from Qld Fmly. (CASTE NO BAR)

Tall, B'ful, Smart Girl with Indian Values,
Cont: 09820351373 thakurfamily7@gmail.com

SOUTH-BOMBAY? High Net-Worth? We can help you find the Perfect Match. Just Email your Biodata to mynrg210@gmail.com

Non Formal - No Fee!
Call/sms: Neeta: 9820683156.

PROF. ext. well settled, Pvt Equity Fund Mumbai, High 7 fig.inc., Premier educated, LSE, England, July 77, 172, belongs to status. Agrawal family from Delhi, Mumbai, Seeks Writing/Non working, Good Family. Caste no bar. Contact: 9819297721 Email: 20106hubh@gmail.com

SM for Hindu Maheshwari 32/5'10" Boom and having own business in Jaipur A1:10Lacs PA seeking beautiful and cultured hindu girl. Caste no bar send BHP: maheshwarisuper@sify.com #09560885792

ALLIANCE for SM sindhi boy 26/5'8" CA wrking at a managerial level A1: 7Lac PA. Expected beautiful educated girl. Caste no bar. Send BHP at rohit.tej@sify.com #09560885797

MBA 35 Mumbai Smart extremely handsome Hindu Brahmin wkg at sr level with leading bank, high 7 fig sal. own house, well settled. Seeks slim, b'ful cultured Wkg/Nonwkg. match Send BHP Em: ndkita@yahoo.com

REQ. beautiful, convent educated, mature professional match tall below 36yrs, with respectable family background for well established Sr. Media Professional 38yrs. old tall, handsome. Caste no bar. Write to Box. No. DEL 229712R Times of India, New Delhi-110103

MAHARASHTRAIN Brahmin only child. Own house & settled business No bad habits, Caste No Bar, Veg. Email: purvitha@financier.com

HONEST warm caring decent educated tall H'some well t odo Sindhi bussman of 42 set tied in Mumbai/ Surat divorcee veg teetotaler non smoker satsangi seeks suit match Caste no bar.M: 09030355353 EM: simranisilka@gmail.com

NIGAM H'some May' 78/ 5'11" MBA. 68K Euro PA. Wkg Europe MNC for Some more Yr. Delhi based fmly. Seeks PQ B'ful Tall Girl. Caste no bar. Visiting India. Em: 20105wagat@gmail.com

KAYASTHA 30/5'11"/BE/MS wkg USA. Slightly Man glik seeks well cult'd. Edu & B'ful girl. Caste no bar. BHP to Email.vivahsai@yahoo.com

EQUALITY MARRIAGE

ENGR. Alone Rich Brahmin Never Married 48+ / 170 cm. Can Relocate Anywhere Seeks Suitable Un Married Girl Up to 36 yrs. No Dowry M: 0982192723 / 09789081645 NAGESHRO@yahoo.com

GROOM Hindu Mochi - 30/5'7" MBBS Dip. Diabeto PCPS Medicine - 1.5 lakhs (hindi spoken) expectation - MBBS, beautiful, Cont: 0251-2403309, 09869549828

SCHEDULED CASTE/ SCHEDULED TRIBES

ASSTT. Commissioner, Commercial Tax, 2004, selected PCS, Dy. Collector UP 2006, B.Tech, 30/5'10" Chamar fair smart boy rptd Civil Service fmly, seeks b'ful edu pref service girl, edu fmly Caste no Bar # 0121-2652750, 9997323756

PQM4 Kori Boy 5'10"/30/ Fair H'some, BE (Electronics), wkg MNC Delhi, 11LPA, Caste No Bar. Send BHP to: drkapilverma@gmail.com. Ph-0731-0408151/0999328801



SM4 handsome SC, Dhusia, 26/170, BE+MBA working MNC Bangalore, family settled in Delhi, father Rtd. Sr. Class - I Offr. & serving girl. M. 09968294283 e-mail- rattanlalbhagat@yahoo.com

SECOND MARRIAGE

33,5'7" Gursikh Arora 1155 Divorced Merchant Navy Chief Officer seeks Edu. Divorcee/ Widow. Ph: 9922746295. Email: atee2ds@gmail.com

LOOKING for a bride for Rajkot Based Vaishnav Vanki Widower 58/5'4" weight 48 kg. B.Com Computer Diploma. VRS From Bank with Pension. Ready to Relocate anywhere. Caste No Bar. Send BHP to email: stargalaxy007@gmail.com / Call 09930906968.

USA BASED family invites alliance for their son 32yr / 75kg / 5'11" handsome, smart, athletic, educated, strong Indian values, (Divorced - No children) Own business, well settled - American citizenship (Visiting India Aug / Sept.) Alliance sought from beautiful, slim, convent educated, family oriented, active girl with good blend of east & west. Caste no bar. Email Biodata: matrimonialn@gmail.com

WIDOW & WIDOWER

ALLIANCE from PQ Sindhi match preferably medic for widower Doctor 48/5' 10" having established hospital. M-0942381862

GURSIKH 62 Own Business & house Gursikh life companion around 65 well Qld. without Children from India or abroad. #9654509770.

AGARWAL- BISA

PQM for Advocate H'some Delhi boy. Status family Good practice. Oct/78/5'10". Ph - 09818925668 Em: push panjalgupta@gmail.com

MATCH for Garg boys, BE Comp, 32/57, MNC Baroda & ME Civil 28 58" Govt. job. deputed to India. In Call: 094068341572. No Dowry.

BRAHMIN

MATCH4 well placed NI fly, 1981/6.10, Mtrs-Int. Mkts(UK), working in MNC. Hand some. pckg. Eshshi1950@gmail.com T:3821964804

SM4 H'some San. Brmn boy 79/ 5'9" Asst. Commissioner, Indian Revenue Service. B'ful Slim, Dr. CA, IRS etc. Br. Pref. Caste No Bar. Call: 9891650597 E: vivahshubh10@gmail.com

PQ Wkg/N.Wkg Girl for SPB Br. B.Tech. MBA S/W in MNC/NR 12LPA 30/5' fair h'some boy status fmly of Delhi. Em- gnh.1979@gmail.com

FAIR, handsome, well settled, SPB Boy 27/ 167 /B.Tech /MNC Noida seeks fair, slim, well edu. Brahmin NM girl. Contact 09871638105 / r.choubey@gmail.com

H'SOME Karnataka- smarthna br. boy Mum. Settled sr. exec top animation studio, 32/168. 11 Lpa, seeks SM smart, grad. 0222634981, 09820639760, BHP mnkmurthy46@gmail.com

LOOKING for a Suitable match for Gour Brahmin boy, Mangalick, Handsome, MBA, 31 Years, 171 cms, working as a Assistant Manager in MNC Company at Chennai. Contact Mobile No: +91-9940207767, +91-9600166377, +91-962529461

WANTED Edu. B'ful girl for H'some US based Engr, born on 10.12.1982 / 12.35pm / 5'9" Tel Caste no Bar #989947744 Eml: neetapp19@gmail.com

SUITABLE Match required for a Handsome Boy of a reputed family, fair, Height 6 Feet, 31 Years, MBA from University Toronto Call: Mob: 0943112742 / 0931002742 em gill: rrrrllpathy@gmail.com

MAITHIL Brahmin, Bhardwaj, Director Entrepreneur, MBA (IT) rank holder, Well settled in Gurgaon. 33 yrs, 5'11" wheatish, family renowned. Em: amarendrajha2008@yahoo.com # 9818774747

N.I. Maithil Br NM. H'some, Well std boy in Pune 31/58" BE (Com) MNC 10LPA. Divorcee W/16 Months Seeks suitable well Edu. girl. # 09650950192

MUMBAI based H'some, 6'2", BE MBA Nov 83 born only son. In family business seeks tall. Educated b'ful (veg) Brahmin/ Vaishnav girl. Contact: 9820701962, ad_kk@yahoo.com

BHUMIHAR Brahmin CA 33/167cm working Delhi looking 4 Prof. Qualified girl 30/57yrs Native - Bihar. Em: rthakur22@yahoo.co.in

JAISWAL

SM4 31/510" B.Tech Wrkg in US as SWE Consultant from De con Family. Seeks Prof Qld Edu girl. Ph: 09845591720 Email: ritaprasad55@yahoo.com

KHATRI

SM4 UP Khatri, B.Tech MBA boy, 11 June 81/168/5'10cm/ Kanpur, 11LPA. Sr Mgr MNC MUM. 8410102973/8012200331 Eml: seth.shail@gmail.com

PQM 4 H'some UP Khatri boy Oct/81/5'10" B.Tech from status Educated Family Wkg in MNC BHP to email: alliance.khanna@gmail.com

PQM 4 h'some punjabi Khatri Manglik boy 31/172/4.79 420 pm Delhi wkg in MNC. Em: duggalashish10@yahoo.co.in #981105010. 9810626255.

B'FUL tall fair match for 27/6'1.5" BE, MS (MICH) MBAROSS) srvt busi in Mum, parents based in kol. Cont with Bhp.ranjanal909@hotmail.com

KUMAUNI

SM for Kum. Br. Manglik Boy, 30/ 58" Adi Nadi Gautam Gotra, MCA, Working in MNC. Father Rtd. Govt. Officer. Ph: 0522-2357314, 9450754915

PQM for Uch. Kuleen Br. Boy Dec/78/5'7" MBA IIM Ahmedabad/8Ffig. Salary wkg MNC Gurgaon. Delhi Based fmly Seeks BE / MBA Wkg. Br. girl. Ph: 011-23367484, 09811146605.

DELHI based family seeks wrkg Kum. Raj / Brah girl for Kum. Raj B.Tech / MBA / 29 / 5'10", 12 LPA. Send BHP to gavy72@gmail.com

KSHATRIYA

SM4 Kshatriya Namdeo boy 33/58" MBBS + PG. Dip wkg MNC w Qld Up Caste no Bar E: chahak2002@yahoo.co.in Ph: 09829549947, 0744-2405500

in T.C.S seeks Srivastava working girl. Send BHP at Email: akhouri@yahoo.com

SM4 Kayastha 30/5'9"/18 LPA Product Mgr. S/W MNC. Blore. Caste no bar. Mo:0986269402, 09867092199. Em: nrigam@gmail.com

NM Kay boy oct 83/5'10" BE C.S. TCS mumbai presently usa seek slim fair convt edu BE S/W girl send BHP Phone. 0761-2560520 Mobile 09425150775

SAXENA Dr. 28/53" doing PG in MS (General Surgery) MBBS and Govt. Job prof. M: 0983734175/0955701282 Em: prashantmail82@yahoo.com

MAHESHWARI

WANTED well std smart boy for Maheshwari divorcee 33/160cm girl self employed earning 2 to 3 lacs PM. from high Middle Class family Caste no bar. pref Agarwal/Maheshwari/Vaish Jain/Baniya/ Punjabi. Em: maheshwarin@gmail.com Write Box No DEL 228548C Times of India, New Delhi-110103

SAHU-TELI

TELI 33/5'11" fair Marine Engineer holding top rank seeks prof. qualified working bride. Ph: 0987449897/0983473233. Mail: kr09@gmail.com

VAISH

SUITABLE match for Oct 76, 58" Vaish Manglik B.E. MBA boy Area Manager (Essar Retail) Abad. pref professional working good looking care taking girl above 28 yrs. Send BHP to his father M-982068429 Email: avinashrg_2002@yahoo.com

RAUNIYAAR MBA 30/57 settle Businessmen Boy Seeks srvt girl. Caste 09014770 / 9368672779. E- ranjan_shashi_3003@yahoo.co.in

AGARWAL

PQM 4 Smart Well Settled, 27.5'11", Agarwal, B.Tech, MBA, Senior Manager, MNC Noida 18Lpa+. Girl Should be Tall, well Qualified, Slim Photo Must. Caste no Bar. Email: agarwal842@gmail.com. Phone 01832-245944, 243944. After 7 PM.

PQSM 4 GC Holder Agarwal MS boy 32/ 174 Posing Final year MBA in Chicago Visiting Delhi Aug. Girl should be Wkg/ Studying in USA (Pref. Chicago/ East Coast Area) Or Qld to get US Visa on her own / through Employer. Caste no bar. M: 9810141279. Eml: mcs_149@hotmail.com

SMART Agr. Manglik Boy 30/6" BE (Bits Pilani) MBA, (USB) wkg, Wall Street, New York, seeks highly qualified smart girl wkg USA preferred. Boy visiting August Caste no Bar. Call: 09048200941. Email: 1879n@gmail.com

B'FUL talented medico/ non med girl status fmly 4 H'some highly talented fair Doctor boy MBBS(AIMS) MD (USA) 28/58" /169cm 20LPA working USA, genng superspecialist in Nephrology # 0945706470 Em: shashiballo@yahoo.com

PQM 4 handsome boy, NM, 28/58" Comp Engg, highly reputed family, MNC Tech head 35 LPA wkg B'ful, tall girl. Caste no Bar. Contact: 9415042634, e mail: gauravs_mailbox@yahoo.com